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Ontario

Annual Report
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ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1985 - 1986

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Ontario Human Rights Commission
Commission ontarienne des droits de la personne

Suite M-1-59A
Macdonald Block
Toronto, Ontario
M7A 1A2

Bureau M-1-59A
Édifice Macdonald
Toronto (Ontario)
M7A 1A2

Office of the Chairman
Bureau du président

416/965-2388

June, 1986

The Honourable William Wrye
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Mr. Wrye:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1985/86 for submission to the Legislative Assembly of Ontario.

Yours sincerely,

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE



The last several months have been full of challenge both for the Ontario Human Rights Commission, and for me, as Minister responsible for the Commission since July, 1985.

To meet its commitment to strengthen the Commission and give it the stature it deserves, the government has taken some concrete and tangible actions which will have a great effect on the public we seek to serve.

We have taken the first steps in keeping our pledge to expand the role and budget of the Ontario Human Rights Commission to enable it to deal more effectively with the scores of cases of discrimination in the workplace and in housing, among other areas. Forty-one new positions were added to the staff complement in order to assist the Commission in resolving the tremendous backlog of 1,200 cases.

We also appointed a new race relations commissioner, Dan McIntyre, a leader in the field of human rights, a forceful communicator with a passionate concern for community relations, and fair employment and educational opportunities for Ontario's minority citizens.

Because the eradication of discrimination in all its forms is the core objective of the Commission, public education is one of its essential activities. I am happy to say that the Commission will be extending its active education program in order to reach all areas of the province, and to teach the public about intentional and unintentional discriminatory practices.

In the year to come, the government will continue to review and support the activities of the Ontario Human Rights Commission, to ensure that it retains its position in the forefront of all aspects of human rights activities in Ontario and in the country as a whole.

Yours sincerely,

William Wrye
Minister

CHAIRMAN'S REMARKS

The history of human rights in Ontario has been an ever-constant struggle for the dignity and rights of the people of this province. Yet it is a history filled with significant reminders of the constructive, inspirational steps taken to forward our goal of equality of opportunity and the protection of human rights for all Ontarians.

It is the law in this province that people are not to be victimized by discrimination. The Commission, in performing its role, has the legislation and commitment of government policy behind it. We have the legal expertise to advise and support us, and will do whatever is possible and required to strengthen and enhance the protection of human rights in Ontario.

The Code is more than a legal statute, however — it is vital to the way we live and interact with one another on a daily basis. Our legislation involves dignity. The human element has always been, and will continue to be, our first priority. As Premier Peterson stated almost one year ago, "Compassion means recognizing people's rights and insisting they be met."

Fiscal year 1985/86 saw an unprecedented number of complaints received by the Commission. In recognition of this increasing caseload, the Government of Ontario has expressed its active support and interest by allocating an increase in our human and financial resources. As you will read in other sections of this report, this year the Commission was able to effect far more creative and systemic remedies to address structural inequities as well as help develop mechanisms to resolve community and organizational tensions.

Recent Board of Inquiry decisions that will have a major impact on human rights have also been rendered. These include an order that a major employer accommodate an employee who was handicapped by a back ailment and a decision that a company recruiting in Ontario for a project overseas was found to have discriminated against a black applicant.

Very little of this could have been achieved without the unparalleled efforts and expertise of the Commission's staff. We are truly fortunate that such dedicated individuals choose to exercise their exceptional talents and skills in the human rights arena.

I would also like to extend a warm welcome to Dan McIntyre, our Race Relations Commissioner, whose academic and professional credentials are most appropriate for this important position.

It is with regret that the Commission acknowledges the end of the terms of office of Race Relations Commissioners Dr. Bhausaheb Ubale and Bev Salmon, Commissioner Mary Lou Dingle and our Vice-Chairman, Marie Marchand. The compassion, commitment and support to the cause of human rights which distinguished their years of service to the Commission, will, no doubt, continue in their future endeavours.

As ever, we are grateful for the co-operation and guidance of our Minister of Labour, the Honourable William Wrye, and we look forward to a long and productive association.

This has, indeed, been a year of progress and advancement for us, and I once again ask for your much appreciated support and assistance that we may continue to administer and enforce the spirit and the letter of the Code with sensitivity and wisdom.

THE COMMISSION



Back row, left to right:
Aileen Anderson, Lou Ronson, Gene Rheaume, Leslie Blake-Côté,
Lou Alexopoulos
Front row, left to right:
Catherine Frazee, Dan McIntyre (Race Relations Commissioner),
Canon Borden Purcell (Chairman), Bev Salmon (Race Relations Commissioner)
Absent: Marie Marchand (Vice-Chairman), John Bennett

THE COMMISSION



Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, is currently serving his second term as Chairman. Born in Athens, Ontario, Canon Purcell left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as Chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.



Race Relations Commissioner: Dan McIntyre

Appointed to the Commission in January 1986, Mr. McIntyre is a graduate in both business administration and social work. Prior to his becoming Director of the Ontario Region of the Canadian Human Rights Commission in 1982, Mr. McIntyre served as Chief of Community Liaison for that Commission. He has been active in the trade union movement and served as President of Local 70176 of the Public Service Alliance of Canada. Earlier in his career, he worked as a human rights officer, social worker and youth services director in New Brunswick.



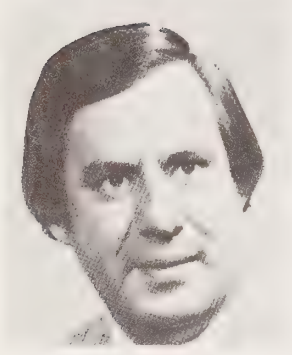
Commissioner: Louis Alexopoulos

A scholarship recipient and graduate of the Universities of Wilfrid Laurier (B.B.A.), York (M.B.A.) and Western Ontario (LL.B.), Mr. Alexopoulos was appointed in February 1984 and brings to his role as Commissioner expertise in legal and financial areas. He is Director and Treasurer of the Canadian Paparaon Association - St. Nicholaos, was a founding member of the Hellenic-Canadian Federation of Ontario and the Hellenic-Canadian Law Association and is a member of the Hellenic-Canadian Professional and Businessmen's Association.



Commissioner: S. Aileen Anderson

Appointed to the Commission in February 1984, Ms. Anderson is a real estate agent and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was elected by the Board to be its representative on the Metropolitan Toronto School Board. Ms. Anderson was also a member of the Advisory Committee to the Minister of Education on General Legislative Grants, the Metropolitan Toronto Committee on Race Relations and Policing, and has served on the Etobicoke Planning Council since 1968.



Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was Member of Parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the National Chairman of the Native Housing Task Force and is an honorary life member of five Metis, Indian and non-status Indian associations.



Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in the trade union movement, Mr. Bennett also serves on the boards of the United Way, Sault Ste. Marie Library, Sault College of Applied Arts and Technology and the Canadian Mental Health Association.



Commissioner: Catherine L. Frazee

Catherine Frazee, currently the Product Standards Co-ordinator for Esso Petroleum Canada, holds Board membership in the Canadian Paraplegic Association and has actively served as a volunteer with a variety of community organizations such as the Canadian Special Olympics for the Mentally Disabled, the International Year of Disabled Persons and Daybreak Community for Mentally Disabled Adults.



Commissioner: R. Lou Ronson

R. Lou Ronson is Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce.



Commissioner: Leslie Blake-Côté

Leslie Blake-Côté utilizes her varied background in teaching, print and broadcast journalism and public relations as a feature writer for local and national trade magazines and newspapers, and as researcher/host of numerous cable television documentaries. Ms. Blake-Côté is also involved in community and volunteer endeavours.



Vice-Chairman: Marie T. Marchand

Born in Moncton, New Brunswick, Ms. Marchand studied political science and public administration at the University of Ottawa. A member of the Commission since 1979, Ms. Marchand assumed the duties of Vice-Chairman in April 1985. Fluently bilingual, Ms. Marchand has been extensively involved in many community organizations and is currently a member of the Board of Canadian National. Ms. Marchand's term expired in February 1986.



Race Relations Commissioner: Beverley Salmon

Bev Salmon practised her profession of public health nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multiculturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee of the Toronto Board of Education. Currently, she serves as an alderman in North York, is a member of the Arbitrators Institute of Canada and the Toronto Urban Alliance on Race Relations. Ms. Salmon's term expired in February 1986.



Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D. in Economics. He authored a report entitled: "Equal Opportunity and Public Policy: A Report on Concerns of the South Asian Canadian Community Regarding their Place in the Canadian Mosaic." In July 1983 Dr. Ubale was elected to the Board of Directors of the International Association of Official Human Rights Agencies. Dr. Ubale's term expired in November 1985.



Commissioner: Mary Lou Dingle, Q.C.

Mary Lou Dingle is an active partner in a Hamilton law firm. She graduated from McMaster University in Hamilton and Osgoode Hall Law School in Toronto and was called to the Ontario Bar with honours in 1964. An active participant in community life, she is a charter member of the Hamilton Elizabeth Fry Society, a former member of the Equal Rights Review and Co-ordinating Committee for McMaster University and the Legal Aid Area Committee in Hamilton and was involved in the United Way and the Canadian Club. Ms. Dingle's term expired in November 1985.

COMMISSION ACTIVITIES

1985/86

The aim of the Ontario Human Rights Commission is to create a climate of understanding and mutual respect wherein the dignity and worth of every person is recognized and where equality of rights and opportunities is provided without discrimination. In an effort to accomplish this goal, the Commission places a strong emphasis on public education activities.

Public Education and Consultation

From its daily experience, the Commission has become increasingly aware of the ongoing need to educate groups and individuals about their rights and responsibilities under the Code and about the principles underlying its provisions.

During fiscal year 1985/86, the Chairman, Canon Borden Purcell and Commissioners participated in consultations and educational events throughout Ontario concerning human rights and the Commission's programs of conciliation and compliance and race relations. The Chairman participated in close to 125 public education activities including speaking engagements, conferences and community functions. This year he spoke at events in Windsor, Brantford, Burlington, St. George, Belleville, Kingston, Brockville, Smiths Falls, Ottawa and Toronto. The audiences at these speaking events were made up of employers, the Canadian Manufacturers' Association, various personnel associations, unions, lawyers, women's groups, Native people, religious institutions, ethnic, cultural and race relations organizations, associations assisting persons with physical and mental handicaps, police, service clubs and students. The Chairman also held consultations throughout the year with representatives of business, unions, the insurance industry, health care officials, religious leaders, officials from all levels of government as well as the Urban Alliance on Race Relations, the Ombudsman of Ontario and the Canadian Human Rights Commission. In addition, the Chairman and Commissioners were interviewed many times by the print, broadcast and cable media throughout Ontario, including the French language and ethnic press. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, distribution of materials and consultations.

During the monthly meetings of the Commission, a number of individuals and organizational representatives were invited to discuss human rights issues which, in turn, enabled the Commission to be kept abreast of specific human rights concerns and assisted in its development of policies and programs. Through this forum, mutual goals were recognized as well as the need for co-operation in achieving them.

Close contact with school boards, business organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold, co-sponsor and participate in many seminars and conferences throughout the province during the fiscal year in an attempt to further increase awareness of and sensitivity towards human rights in our society. These events are outlined in further sections of this Report.

Affirmation

Rabbi W. Gunther Plaut, former Vice-Chairman of the Commission, is the editor of Affirmation, the Commission's quarterly publication. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of Boards of Inquiry, editorials and articles on important human rights topics. Articles are written by staff, Commissioners and members of the public and include a number written in the French language. Affirmation has a circulation of over 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1985 issue featured two articles about a highly successful conference for business executives organized by the Commission on the subject of "The Merit Principle in Action". Other articles focused on Judge Rosalie Abella's report on employment equity, and a board of inquiry decision dealing with sexual harassment.

September's issue included a feature story on John Kellerman, long-time community advocate and consultant on the rights of persons with a handicap. The Chairman's Corner paid tribute to the contributions to human rights made by the labour movement.

Affirmation's December 1985 issue featured an article on the problems confronting immigrant women in our society, and Canon Purcell's column focused on international human rights and the 37th anniversary of the United Nations Universal Declaration of Human Rights.

The March 1986 Affirmation contained an article highlighting a major board of inquiry decision in the complaint of Gladstone Leslie Scott against Foster Wheeler. The board chairman ruled that racial discrimination in employment had occurred and ordered Foster Wheeler to pay Mr. Scott almost $50,000 as compensation to remedy the matter, the largest monetary award ever granted in a human rights case in Ontario. There was also an article on systemic discrimination and one on the economic benefits to employers of implementing employment equity in the workplace.

International Responsibilities

Canada and its provinces and territories have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened during the Helsinki Conference of 1975 and by the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of, and holds membership in, a network of human rights agencies on both the national and international levels. During the fiscal year, Commission representatives participated in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies and the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. A number of representatives from human rights commissions in the United States, Australia and the United Kingdom sought information and assistance by exploring and examining the role and function of the Ontario Commission. The Ontario Human Rights Commission will play host to the annual conference of the Canadian Association of Statutory Human Rights Agencies in the summer of 1987.

A Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. This committee, which meets at least twice a year, was established to provide and maintain the necessary liaison among jurisdictions in Canada and consultation for Canada to meet its obligations under the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has co-ordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, during which ministers from all jurisdictions in Canada met to review and discuss current issues and initiatives in the area of human rights. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues internationally. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform to the principles enunciated in the International Covenants and the Canadian Charter of Rights and Freedoms.

The Chairman participated in a number of activities relating to the protection of human rights throughout the world. He attended the Canadian Human Rights Foundation Conference on Human Rights and Canadian Foreign Policy, held in Ottawa in March. He is a founding member of the Inter-Faith Council on Soviet Jewry and in this connection, participated in a number of public events designed to bring more attention to this continuing injustice.

United Nations Declaration of Human Rights - 37th Anniversary

December 10, 1985 marked the 37th anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to human values but also as a commitment to the furtherance of universal social harmony.

The Commission commemorated the anniversary of the Universal Declaration and the principles contained therein by sending, in both English and French, more than 6,000 letters and lists of suggested celebratory activities to schools, municipalities, and government agencies. Schools also received a copy of the Commission's 1984/85 Annual Report in French and English. Educational institutions throughout the province responded with an unprecedented number of requests for classroom and assembly speakers, literature and assistance in designing a human rights component as part of the curriculum.

The Commission wrote special letters to municipal leaders, requesting them to proclaim Human Rights Day/Week and to encourage observance of this event at the community level. Many municipalities responded positively to this request, by publishing and distributing official proclamations of support and adherence to the principles of human rights.

Clearly, individual human rights commissions and human rights legislation will not end discrimination on their own. The Ontario Human Rights Commission has a uniquely important role to play, but it requires the assistance and support of all individuals, organizations and institutions in our society to improve human rights and afford each individual the dignity and equality of opportunity that is his/her due.

NEW INITIATIVES

1985/86

The expanded mandate under the Human Rights Code, 1981 resulted in a dramatic increase in the number of complaints filed with the Commission. Between fiscal years 1981/82 and 1984/85, the volume of cases registered increased by 130 per cent, from 695 to 1,599. The number of inquiries and referrals handled in the same period increased by 144 per cent, from 27,000 to 66,000. Similar rates of growth were evident in public educational and consultative undertakings and in the number of requests for exemptions from the provisions of the Code. The large growth in the volume of work together with an inadequacy of staff resources resulted in a substantial increase in the backlog of complaints by the end of fiscal year 1984/85.

Minorities, women and persons with handicaps, together with their representative interest groups, are increasingly taking strong collective measures to redress incidents of discrimination. The four-year period has seen an increased tendency for advocacy and community groups to participate in the casework process on behalf of complainants and other members of groups that are protected under the Code. The enforcement of anti-discrimination legislation has a twofold effect. On the one hand, it engenders changes in society and its institutions by modifying employment and institutional practices, and on the other, it heightens the expectations of protected groups. Complainants are more aware of their rights under the Code and are less willing to accept discriminatory treatment together with what they perceive as inadequate remedies.

A related trend is an increase in the number and complexity of multiple complaints in step with complaints alleging systemic discrimination in response to discriminatory practices at the institutional level affecting large segments of the work force. Accordingly, the complaint process involves both the community and the institutional implications of a case as well as a remedy for complainants.

A number of administrative and organizational initiatives during the past several years have greatly assisted the Commission to deal more efficiently and effectively with its workload. In 1981 the Commission employed its first full-time legal counsel, whose primary role is to advise the Commission, its staff and members of the public with respect to the statutory interpretation of the provisions of the Code and their implementation. Not only has the introduction of substantive changes in the Code made legal input necessary, but the nature of the complaints and issues before the Commission are of an increasingly technical and complex nature. A second legal counsel was assigned to the Commission in 1985.

In addition, a number of new procedures were incorporated into the Code, providing a greater degree of administrative fairness to the parties to a complaint. Included among these is a provision under which complainants may request the Commission to reconsider a decision not to request the appointment of a Board of Inquiry to hear and decide their complaints. Following the reconsideration process, the Commission's decision is communicated in writing to the complainant and respondent. As well, the Commission has standardized the procedures governing the disclosure of information to the parties to a complaint. These procedures have become more refined in response to the continuing evolution of administrative law and concepts of administrative fairness. While these legislative and administrative initatives have proved to be of significant benefit to both complainants and respondents, they have resulted, in some instances, in an increase in the time required to resolve complaints.

For these reasons, it became compellingly evident during fiscal year 1985/86 that the Commission's resources were inadequate to accommodate all of these changes. Moreover, changes to the complaint procedures were required to expedite the handling of investigations.

In November 1985, in response to these trends, the Minister announced several measures to strengthen the Commission in order to enable it to improve the quality of its services. The Commission was allocated the resources to hire 41 additional members of staff, 13 of which are permanent positions in the Race Relations Division and 28 of which are one-year contract positions assigned to the Conciliation and Compliance Division.

Twenty new Human Rights Officers and seven clerical employees were hired early in 1986 and assigned to deal primarily with a backlog of 1,200 complaints that had been active for a period of six months or more. A co-ordinator was assigned to establish the framework for the backlog reduction program and manage and monitor its progress. It is estimated that most of these backlogged cases will have been resolved by June 1986.

In addition, a review of the Commission's operations was conducted during the fiscal year, and a comprehensive series of case processing and case management changes are recommended. The implementation of these recommendations will be completed during fiscal year 1986/87.

LEGAL INITIATIVES

1985/86

Judicial and Quasi-Judicial Decisions

In December 1985 the Supreme Court of Canada rendered a landmark decision in the case concerning a complaint filed by Theresa O'Malley against Simpsons-Sears Limited. Of great importance is the Court's ruling that it is not necessary to prove intent to establish a finding of discrimination. The Court held that human rights legislation is of a special nature and should be given an interpretation that will advance its broad purposes as set out in the preamble to the Code.

In this case, the complainant alleged that she was being discriminated against because her employer's policy required full-time sales staff to work on Saturdays which was contrary to her religious beliefs. The Court decided that an employment rule honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. This is adverse effect discrimination. In this kind of situation, the employer has a duty to accommodate the complainant short of undue hardship; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

In August 1985 the complaint of Michael Bates against the Zurich Insurance Company resulted in a significant decision by a Board of Inquiry, with far reaching implications for the automobile insurance industry. In essence, the complainant alleged that young, single male drivers must pay automobile insurance rates that exceed those of young, single female drivers as well as those charged to young, married male drivers, and that this discrepancy contravened the provisions of the Code. Since both the insurance company and the complainant agreed that a prima facie case of discrimination had been established, the question to be addressed was whether or not Zurich had a defence under section 21 of the Code. This section provides that rights under sections 1 and 3 of the Code are not infringed where a contract of automobile insurance makes a distinction on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap.

The Board of Inquiry ruled that insurers should be required by section 21 of the Code to demonstrate that a rate classification system that discriminates on the basis of prohibited group characteristics is reasonably necessary to ensure the efficient operation of the insurance system. In the opinion of the Board, there was simply no evidence offered to support the assertion that it has been scientifically proved that there is a direct causal relationship between the discriminatory group factors used - age, sex, and marital status - and high risk. There was also no evidence offered by Zurich to show that unmarried males under the age of 25 constitute a high risk. The Board of Inquiry concluded that the current automobile driver classifications of unmarried male drivers under 25 contravened the Code and did not fall within the provisions of section 21. The respondent has filed an appeal from the decision of the Board of Inquiry, which has not yet been heard.

The Annual Report, 1984/85 contained a summary of the Cameron and Nel-Gor Castle Nursing Home case, which was the first Board of Inquiry decision in Ontario to deal with discrimination because of handicap. In finding that the complainant had

been discriminated against, the Board held that the complainant's handicap did not in any way limit her ability to perform the essential duties of the position that she was denied. The respondent's appeal of this decision was dismissed by the Divisional Court of the Supreme Court of Ontario in September 1985. In its endorsement the Court noted that it was unable to find error in the decision of the Board of Inquiry Chairman or in the reasons he gave for it. The respondent's Application for Leave to Appeal the Divisional Court's decision was dismissed by the Court of Appeal in November 1985.

A significant settlement of a complaint based on handicap was reached in the White and LCBO case. The complainant sustained an injury to his back while unloading heavy cartons at his place of employment. The employer initially refused to allow him to resume his position unless he could fulfil 100 per cent of his duties. Medical testimony before the Board revealed that Mr. White was physically capable of performing the essential duties of his job except for the heavy repetitive lifting, which appeared to be a minor part of the job. The Board heard from other employees with similar handicaps who testified that they had been accommodated with respect to their jobs. Following this evidence, the parties entered into a settlement which formed the basis of a consent order. The employer agreed to accommodate Mr. White with respect to his job, and the terms of the accommodation were set out in the order. The employer acknowledged that the Code requires the provision of reasonable accommodation to handicapped applicants and employees and that the abilities of handicapped applicants and employees to perform any job are to be assessed on an individual basis.

The highest award of damages ever granted by a Board of Inquiry occurred in the Gladstone Scott and Foster Wheeler case. In his decision, rendered May 17, 1985, the Board of Inquiry Chairman ruled that the employer had discriminated against Mr. Scott because of his race and colour when it refused to refer him for work on a project in Jamaica. Damages in the amount of $49,913.93 were awarded to the complainant. This amount covered general damages, special damages and interest. The Board noted that the purpose of an order should be to restore the complainant, so far as that is possible, to the position he would have been in but for the illegal and discriminatory act.

A punitive element was considered by the Board of Inquiry in awarding general damages in the amount of $3,000 to the complainant in the case of Underwood and The Board of Commissioners of Police for the Town of Smiths Falls. The Board gave its decision in December 1985 and came to the conclusion that the complainant's application for the position of Police Constable was set aside solely because he was 40 years of age. The Board of Commissioners of Police had infringed section 4(1) of the Code, which gives individuals the right to be treated equally with respect to employment without discrimination because of age. There was evidence of substantial and protracted injury to Mr. Underwood's dignity and self respect, and there was deprivation of his right to freedom from discrimination. The Board of Inquiry was of the view that the injuries suffered by the complainant were made more serious by the discrimination having been practised by a public body, whose judgements are bound to be more publicized and far more likely to be assumed by the public to be sound than those of a private organization. The Board of Inquiry noted that the respondent's reluctance to co-operate with the Commission's officer verged on obstructing him in his duties. In assessing damages, the Board of Inquiry took into account these obstructive tactics employed by the Board of Commissioners of Police of the Town of Smiths Falls.

An issue affecting sick leave benefits for pregnant women was addressed in a decision of the Supreme Court of Ontario in London Life Insurance Company and the

Ontario Human Rights Commission and Patricia Skidmore. As a result of this decision, which was released in May 1985, an employer who offers sick leave coverage to employees must extend such coverage to a pregnant woman who is not on a pregnancy leave of absence.

Amendment

Effective April 1, 1985, the definition of handicap found in section 9(b) of the Code was amended to include "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act." This amendment underscores the intent of the legislation to prohibit employers from discriminating against persons because they have claimed or received benefits under the Workers' Compensation Act.

Canadian Charter of Rights and Freedoms

The coming into force of the equality rights provision of the Canadian Charter of Rights and Freedoms on April 17, 1985 has resulted in court challenges of the constitutional validity of certain provisions of the Human Rights Code, 1981, which allow for mandatory retirement at age 65 (s.9(a)) and participation in athletic activities to be restricted to persons of the same sex (s.19(2)). No decision has yet been rendered by the courts on whether section 9(a) of the Code infringes the Charter. With respect to section 19(2), in the Justine Blainey case the Supreme Court of Ontario ruled in September 1985 that section 19(2) contravenes section 15(1) of the Charter but that the exclusion of Justine Blainey was demonstrably justified in a free and democratic society under section 1 of the Charter and therefore did not infringe the Canadian Charter of Rights and Freedoms. An appeal from this decision was heard by the Court of Appeal in January 1986, but a decision has not yet been rendered. It should be noted that the Government of Ontario has stated its intention to repeal section 19(2) of the Code.

The Ministry of Labour, in conjunction with the Ministry of the Attorney-General, has reviewed other provisions of the Code with a view to bringing them into harmony with section 15 of the Charter. A number of amendments to the Code have been proposed and were under review at the time of writing this Report.

ROLE AND ACTIVITIES OF THE

RACE RELATIONS DIVISION

1985/86

The Race Relations Division of the Ontario Human Rights Commission derives its statutory mandate in the area of race relations under section 27(2) of the Human Rights Code, 1981. The functions of the Race Relations Division, outlined in section 28(f), (g) and (h) of the Code, relate to race, ancestry, place of origin, colour, ethnic origin or creed, and require the Division to:

- inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;

- initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;

- promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

The Division's mandate clearly defines its role to include assisting and encouraging other agencies to engage in race relations work. The Division upholds the philosophy that human rights and harmonious race relations cannot be achieved by government agencies alone, but depend in large measure on the efforts and achievements of other organizations, institutions and individuals. The Race Relations Division's primary goal is to work with all levels of government, institutions and the community to help them to develop their own internal capacity to deal with problems of racism and racial discrimination by providing consultative services and other necessary assistance in policy and program development.

The Division is organized into three main units - Policy and Program Development, Operations, and Finance and General Administration. This structure facilitates the implementation of the Division's programs, which include the development of resource materials, the holding of consultations, seminars and conferences with community groups and institutions and the monitoring of the current race relations climate as well as the mediation of race-related conflicts and tensions in the community.

ACTIVITIES 1985/86

OPERATIONS UNIT

INSTITUTIONS

Education

The Division has co-sponsored a major human rights curriculum project with the Hamilton Board of Education. The project team has produced 12 modules on various human rights and race relations topics for Grades 11 and 12 People & Places courses and Grades 9 and 10 English courses. During fiscal year 1985/86, the Division organized the pilot testing of these modules in classrooms within eight participating Boards of Education. Revisions resulting from this testing will be incorporated into the material to be completed in 1986/87.

The Division maintained a co-operative working relationship with the Ministry of Education and assisted in planning the Ministry's major 2 1/2 day conference on race and ethnic relations which was held in March. One of the highlights of this conference was the presentation of a model race and ethnic relations policy which was distributed to the 800 educators and community representatives in attendance. This model policy was developed by the Race Relations Division with the assistance of a number of educators and race relations practitioners for use by School Boards across the province. This policy covers such areas as curriculum, school-community relations, co-curricular activities, employment and racial incidents.

Following is the statement of principle of this policy:

> The responsibility for promoting positive race relations and for combating racism and ethnic discrimination lies with all sectors of our society. There is a special responsibility for our educational institutions - the responsibility to help our young people develop the attitudes, values, knowledge - that will help them respect, understand and accept others. Each young person should feel a part of the community and have the opportunity to contribute fully to the development and well-being of the community.
>
> The promotion of positive race and ethnic relations must include a willingness to challenge the presence of prejudice and discrimination in our schools, our young people and our community. We must seek to create an environment where students, parents and employers feel that they will not be subjected to bias.
>
> Our society is a multiracial, multiethnic one, in which cultural pluralism is encouraged. Within this framework we must educate our students to respect others and to participate equally in this society. This educational process must begin with an attitude that recognizes that people, be they members of majority or minority groups, need to affirm their own histories through their own language, set of social relations, customs and creeds. We must look to schools as places where students learn of the contributions of all groups and where they develop respect for cultural, racial and ethnic diversity, which certainly exists in Canada and in Ontario regardless of the demographic composition of any one community. In order to affirm the Schools Board's commitment to this principle, it is expected that the School Board will, through its trustees, administrators, teaching and non-teaching staff, in

accordance with policies of the Ministry of Education:

1. develop and promote positive race and ethnic relations for its students, staff and community;

2. take steps to communicate its commitment to this principle to its staff, students and community.

The Division carried out numerous speaking engagements and training sessions with trustees, school administrators, principals, teachers and students during the fiscal year. The Division's staff conducted seminars and workshops with School Boards, educators, trustees and students. These workshops often featured the Race Relations Division film "Can Racial Attitudes be Changed?", which explores the racial attitudes of school children. Assistance was extended to the Scarborough and East York Boards of Education to develop race relations policies and to other Metropolitan Toronto area School Boards in the implementation and evaluation of their race relations policies.

Media

Staff of the Division facilitated the submission to the Ontario Press Council of a number of complaints about racially insensitive material in the press and closely monitored the outcome of these complaints. These included the complaint of the Anti-Apartheid Coalition of Toronto against The Toronto Sun for several articles they felt were racially offensive. The Coalition and other concerned community groups and individuals held a series of community meetings at which the support of the City of Toronto's Committee on Community and Race Relations and the Race Relations Division was enlisted. The Urban Alliance on Race Relations produced a report analysing the content of a number of articles in The Toronto Sun that were purported to be racist. Several meetings of concerned parties were held with the publisher of The Toronto Sun in an effort to sensitize the newspaper to community concerns and the potential negative impact of such articles on the community at large. While the complaints to the Ontario Press Council were not substantiated, the initiatives in this case have resulted in raising the awareness of the public and media to race relations concerns in the media.

Business and Industry

Staff of the Business and Industry sector of the Division analysed the distribution and use of the Workbook on Equal Opportunity in Employment, a document produced by the Division and first introduced in June 1984. In the 12-month period studied, 4,440 copies of the workbook were distributed upon request. The report identified employment sectors in which the workbook had received little distribution, and targetted those sectors for future marketing and distribution strategies. Consultations with individual employers revealed that the book was used in a variety of ways to train management staff, and evaluations of the book were positive. The Division used the report as a basis for a series of consultations held with major employers' associations, which gave rise to a number of co-operative efforts between the Division and these associations, including further distribution of the workbook, articles on the workbook in association newsletters and race relations seminars for interested association members.

Health Care

A study entitled An Exploratory Study of the Attitudes and Perceptions of Minority and Majority Health Care Workers was commissioned by the Division and authored by Dr. Wilson Head of the Department of Social Work, York University. This study was undertaken in response to a series of complaints launched by a group of visible minority nurses. The study focused on concerns about racial discrimination as it relates to promotional opportunities, work assignments and performance evaluation in health care facilities in Metropolitan Toronto. The objectives of the study were: to identify and document problems and concerns raised by racial minority nurses in a sample of health care settings in Metropolitan Toronto; to ascertain if these problems are experienced equally by nurses of all racial backgrounds or if there are specific areas in which racial minority nurses are subject to unequal or unfair treatment; to either verify the complaints of discrimination or show them to be groundless and to bring the findings to the attention of the relevant individuals and groups for appropriate action.

The report was released in the spring of 1986 and was preceded by a series of consultations with key health care organizations to discuss the issues raised and the recommendations made. The report and consultations will help shape the work of the staff assigned to this area during fiscal year 1986/87.

COMMUNITY RELATIONS

Mediations

Mediation of community conflicts and individual disputes continued to be an important component of the Division's work. The following are examples of activities engaged in by Division staff.

Several members of the Arab community alleged that a supermarket portrayed a distorted image of the entire Arab community by circulating a memo to the manager and department heads claiming that a man who looked like an "Arab" was cheating various store clerks at check-out counters. Following the Division's intervention, the supermarket extended an apology to the members of the Canadian Arab Federation and acknowledged the need to be more sensitive to all ethnic communities. They showed a great deal of interest in the Commission's work and requested that they be included in the mailing list of all Commission publications.

Two complaints were lodged with the Division alleging that a brand of toothpaste called "Darkie Toothpaste", portraying Blacks in a derogatory manner, was being sold in a Toronto store. The Division made contact with the store's proprietor and pointed out the negative impact of the sale of such a product on the community. The proprietor removed the offending item from sale.

The Division received a complaint alleging that a small store was selling racist material in the form of jokes printed on approximately 150 pieces of paper and contained in a soft-drink can entitled "Canned Laughter". An examination of the product indicated that the material stereotyped various racial and ethnic groups, including Blacks, Japanese, Poles and Jews.

The Division made contact with the owner of the store and had discussions with respect to the racist nature of the product. It was pointed out how many of the jokes stereotyped various groups and how this, in turn, impacted negatively on inter-group relations in the community. After protracted discussion with the proprietor, one of the jokes was pointed out as being stereotypical of women in general. The proprietor, a female, then agreed to remove the offending product from sale.

The Division is continuing to monitor these two cases, with a view to ascertaining whether the products are being sold elsewhere.

A major mediation was successfully concluded by the Division in Brantford during the year. Over a period of several years, a downtown subsidized housing development has become a densely populated community, with an ever increasing visible minority and ethnic presence. Within the same period a number of incidents were perpetrated by groups of youths against local residents, particularly racial minorities, the elderly, persons with handicaps and children. These youths engaged in acts of vandalism, physical and verbal assaults and theft. Many of the more publicized incidents involved attacks and acts of violence against visible minority residents in the area. Towards the end of 1985, these incidents had become a matter of great concern to local residents.

Although racial and ethnic tensions had developed in this community, they had resulted primarily from an inadequacy of community resources to deal with the various problems experienced by residents of the housing development. It also became clear that the situation had a serious impact on racial and ethnic minorities in the neighbourhood. It was necessary to co-ordinate a broad response that would address a variety of concerns, such as police-community relations and recreation and counselling services for youth.

The Division's response was multifaceted. The regional Race Relations Officer in Southwestern Ontario carried out an on-the-spot investigation and assessment of the problem. He worked with local police officials to obtain more information on the incidents. The officer then conducted a census of local service agencies, institutions and community organizations that had any contact with the youths involved. An action plan was developed to work with these agencies, institutions and community organizations in identifying the causes of the problem and methods of resolving it, as well as strategies to prevent future occurrences of this problem.

Further work to dampen the mood of confrontation and namecalling was then undertaken by the officer as a prelude to a public meeting organized to discuss the issues and concerns of residents. Neighbours, encouraged by the positive tone of the meeting, organized various groups to deal with particular aspects of the current problem. A number of standing action-oriented committees were established, including a neighbourhood watch group and a local dance and recreation committee, to help provide more positive forms of energy release for the young people in the area.

During the past year, many cases alleging the dissemination of hate propaganda against identified groups on the basis of their race, creed and ancestry were brought to the attention of the Division. Hate literature protesting the visit of the Pope to Canada and vilifying the Jewish, Sikh and Hindu communities surfaced both in Toronto and across the province. The Division referred these cases to a special task force set up by the Ministry of the Attorney-General for appropriate follow-up. In addition, the Division, in co-operation with the Multicultural and Race Relations Committee of Scarborough, organized a seminar on "Dissemination of Hate, its Causes and Impact. Are There Legal Remedies?" Among the speakers were Allan Shefman of the League for Human Rights of B'nai B'rith and Alan Borovoy of the Canadian Civil Liberties Association.

Municipal Government Initiatives

The Division's staff continued to assist various municipal governments to develop initiatives on race relations issues. This was achieved through two strategies:

- by acting as a resource person or consultant to those municipalities where race relations committees had been established;
- by offering assistance and advice to other municipalities in the development of similar infrastructures to deal with race relations and multicultural issues.

During the past year, staff of the Division assisted the City of Scarborough and the City of Mississauga in launching such initiatives. For two years, the Division participated in negotiations with the Mayor of Scarborough and a number of racial and ethnic organizations and developed recommendations to respond to race relations issues in the community. A proposal was presented to Scarborough City Council, which recognized the need to establish an advisory group to deal with issues relating to multiculturalism and race relations. Subsequently, the City Council struck a special "Sixty Day" Committee comprised of residents and members of Council to review the structure, terms of reference and membership of such a group. The Council requested and received assistance from the Division throughout this process. Upon the committee's recommendations, a municipal committee composed of senior representatives of Scarborough institutions and key community organizations was formed. A Division staff member attends meetings regularly and acts as a resource to the committee.

A similar process was undertaken in Mississauga, whereby the Division's staff assisted in the formation of the Mississauga Community Relations Committee, comprising senior officials of city departments and institutions, community representatives and staff of the Division.

Community Development Initiatives

In addition to responding to individual community conflicts, the Division's staff have also been instrumental in initiating developmental activities and programs for racial and ethnic communities. For example, a major community development project is underway at various Metro Toronto housing projects in the City of Scarborough. The implementation of these projects has resulted in sensitizing tenants to the dynamics of race relations and to the need for mutual understanding and respect of different racial groups, cultures and heritages.

The Province of Ontario declared the month of February to be "Black History Month." In order to celebrate the achievements of Black young people, the Division co-sponsored a Black Youth Conference, in co-operation with the North York School Board and the Black Educators' Committee. Nearly 200 youth participated in various workshops.

The Division's community development program includes other locally based initiatives, such as the formation of tenants' associations, inter-agency associations and advisory committees in Metropolitan Toronto Housing Authority housing projects.

Premiere of the Film "You Call Me Coloured"

The Race Relations Division co-sponsored a film on "Black Perspectives", a model community organization that assists young people to develop skills and aptitudes through music, poetry and art. The Division provided financial assistance and played

a consultative role in the production of the film. It also co-sponsored the premiere of the film in January 1986. Nearly 700 people, including politicians, community workers, young people and agency representatives, attended the premiere. The film depicts young Black musicians, artists and writers, and portrays the cultural contributions of the members of "Black Perspectives."

International Youth Year

The year 1985 was proclaimed as the "International Year of Youth" by the United Nations. Many community organizations from across the province requested assistance from the Division in organizing youth conferences designed to focus on issues affecting young people of various racial and ethnic backgrounds. A number of examples of such initiatives follow.

In Toronto, over 800 persons attended the Brihan Maharshtra Mandal Convention. This conference for the Marathi-speaking Canadians of origins in India provided discussion forums on various subjects pertaining to youth, such as social and cultural integration.

The Ontario Council of Filipino Canadian Associations celebrated International Youth Year by co-sponsoring a Filipino-Canadian Youth Conference. Approximately 200 young people attended workshops dealing with the aspirations, achievements and concerns of Filipino-Canadian youth.

In Windsor, the Division co-sponsored a conference with the Urban Alliance on Race Relations entitled "Windsor Youth Preparing for Tomorrow". The objective of this conference was to encourage the participants to develop a sense of responsibility and leadership with respect to race-related issues and to create a greater understanding of race relations among Windsor-area young people.

In co-operation with the South Asian Committee, the Division sponsored a conference entitled "Future Directions: A South Asian Youth Perspective". This conference was attended by over 500 persons who participated in workshops and lectures on topics that affect South Asian young people today. Other youth conferences co-sponsored by the Division were held in Etobicoke, Scarborough and the City of Toronto.

REGIONAL ACTIVITIES

Southwestern Ontario

During the fiscal year, the City of Hamilton developed a race relations policy which is included in all contracts of purchase and is distributed to every household in the municipality. A municipally-based race relations committee of 35 members has also been formed, with the mandate to enhance positive race relations in the City of Hamilton.

The seven municipalities that comprise the Waterloo Region are participants in the Waterloo Region Race Relations Council, a 12-person committee that maintains close contact with the mayors, police departments and School Boards in the area. The Council meets on a rotating basis in the seven municipalities and operates under the auspices of the Kitchener Multicultural Centre. The Division is actively involved in both the Hamilton and Waterloo Region Committees.

In Brantford, the Division's officer hosts "The Ethnic Half-Hour", a weekly cable television production. Originally, the show highlighted aspects of multiculturalism,

but is now examining race relations issues in depth. The program offers the Division a very practical method of keeping the region aware of human rights and race relations concerns and activities as well as a means of publicizing relevant publications and events. The Division and the Brantford Ethnoculturefest co-sponsored a conference entitled "The Concept of Human Rights in the Religions of the World."

In London, the Division and the London Human Rights Committee organized a seminar on "Academic Freedom and Racism" at the University of Western Ontario. This educational event was undertaken in response to students' concern about a scheduled lecture on campus by a controversial American psychologist, who propounds the theory that the darker the skin colour the lower the level of intelligence. Although the psychologist's lecture was eventually cancelled, the session aided greatly in sensitizing the community.

Staff of the Division worked with the Windsor Board of Education in the development and formal adoption of a race relations policy. A full-time co-ordinator has been appointed by the Board to implement this policy. On October 30, 1985 the Windsor Board of Education celebrated these two events and distributed framed statements of the race relations policies of the Ontario Government and the Windsor Board of Education to all principals and supervisory staff for display in their offices. Representatives of community groups and institutions attended a reception, where the policies were officially announced.

Eastern Ontario

The Division worked closely with the Kingston and District Committee for Multicultural and Multiracial Harmony and provided assistance in the development of its first constitution. The Committee is composed of representatives of various racial and ethnic groups in the Kingston area and is supported by educational and municipal authorities. Its first annual general meeting was held in April 1985, and sub-committees on education, media and public relations were established.

A member of the Division's Ottawa staff chaired the Advisory Community Committee on Ethnic Social Services (ACCESS), which organized a half-day seminar for senior management of health care and social service organizations, agencies and institutions. The seminar, held in the spring of 1986, was an important first step in the sensitization and education of key players in the health care and social service delivery systems.

Also in Ottawa, the Eastern Region's Race Relations Officer was a member of the planning committee of the Conference on Race Relations in the Workplace. Approximately 250 individuals attended this three-day conference and examined such issues as screening and selection, labour relations, staff training and legislation concerning human rights.

In February 1986 the Division received reports of a number of racial incidents on the campus of Carleton University, including racially derogatory graffiti and the defacement of posters commemorating "Black History Week." The Division's staff met with University officials and representatives of several students' organizations to discuss strategies for dealing with the problem. The University student association indicated its willingness to conduct an internal investigation into the allegations of racism, and the Division offered its assistance in this regard. These events coincided with an invitation to the South African Ambassador to participate in a debate on campus about freedom of the press in South Africa.

In March the Division co-sponsored a student conference on human rights and race relations with the Frontenac County School Board. Three hundred students and Board staff attended the one-day presentation.

Northern Region

In Thunder Bay, the officer is working with the Affirmative Action Co-ordinator of the City to develop education workshops on affirmative action.

In Kenora, a member of staff participates on the board of the "New Opportunities for Women" Program, which provides life skills training, academic upgrading and work experience for employment-disadvantaged women, the majority of whom are Native women. This is a 35-week program, which is in its third year of operation.

The Sault Ste. Marie Friendship Centre, in consultation with the Commission, is preparing an employers' procedural manual on personnel policies. The Commission will assist the Centre to develop guidelines on recruitment, interviewing techniques, establishing terms and conditions of employment, promotion and other employment practices.

Training is being provided to the Sault Ste. Marie Police Department on human rights and cross-cultural issues. Approximately eight sessions have been held over the past three years, involving over 150 officers of the Department.

The Commission has also assisted the Cambrian College Committee on Affirmative Action. The Committee has completed an employee inventory and has drafted a policy for the Board of Governors on employment equity. A co-ordinator will be hired to implement the program, which will attempt to increase the participation of minorities, Natives, women and persons with handicaps in upper management positions.

In Timmins, a staff representative is chairing the Crisis Intervention Steering Committee, which is looking into setting up a crisis centre that will address the needs of Native people as well as those of the community as a whole. Division staff has also discussed with two area Boards of Education the formation of a committee that would formulate a race relations policy for their respective schools.

POLICY AND PROGRAM DEVELOPMENT UNIT

The main objective of the Policy and Program Development Unit is to provide staff functions primarily of a research and analysis nature, to the Division. There are four basic components of this Unit's activities: policy analysis, research, management planning/program development and special projects.

Policy Analysis

Recognizing the particular disadvantages experienced by visible minority women in our society, the Division has initiated an extensive review of its policies, procedures and programs to determine their relevance to visible minority women and issues of importance to them. As well, the Division is working with other provincial government bodies in determining how best to address this initiative.

Staff of the Policy Unit were involved in several inter-ministerial committees to look at such topics as visible minority women, immigration and immigrants and race relations and education.

Research

The Division conducted a number of research projects throughout the course of the year. A major study on employment disadvantaged visible minority youth was commenced and is expected to be completed in the summer of 1986. A study on the racial climate in several cities in the Metropolitan Toronto area was completed during the summer of 1985.

Management Planning Program Development

The Division implemented a computerized statistical information system in order to upgrade its data base. This system is designed to enable accurate and frequent retrieval of information which will be used to assist staff in conducting programs and activities more effectively. The system will also generate information which will be used in future program development.

Special Projects

The Race Relations Division's Youth Employment Project is in its sixth year of operation. The objective of these projects is to provide disadvantaged young people with first job opportunities, work readiness and race relations training. During fiscal year 1985/86, the Division, assisted by the Personnel Branch of the Ministry of Labour, administered six separate programs employing a total of 215 young people in a host of different jobs. The project was begun in Toronto and Windsor and has now been expanded to include Brantford.

The Division also co-sponsored two youth employment projects with the Metropolitan Toronto Police. A total of 41 young people worked directly with police officers in several areas of crime prevention. In one successful project, the participants conducted crime prevention seminars for senior citizens based on the Seniors Taking Extra Precautions (S.T.E.P.) program.

OFFICE OF THE RACE RELATIONS COMMISSIONER

Public Education

Until the conclusion of his term as Race Relations Commissioner in November 1985, Dr. Bhausaheb Ubale continued to engage in activities focusing on the promotion of harmonious race relations throughout the province. This was accomplished through his participation and leadership in conferences, public meetings and consultations with officials of institutions and community members alike. He continued to play a liaison role in community conflict situations in Metropolitan Toronto.

Dr. Ubale also played a key role in the International Association of Official Human Rights Agencies as a member of its Board of Directors.

Race Relations Commissioner Beverley Salmon conducted and participated in public awareness and consultative activities throughout the year on behalf of the Division as well.

Upon his appointment as Race Relations Commissioner in January of 1986, Dan McIntyre quickly established linkages with community organizations and institutional representatives. He also played an active role in public educational activities, including acting as keynote speaker during the Federation of Canadian Municipalities Symposium on Race Relations where he addressed the responsibility of municipalities in ensuring racial harmony and equal opportunity in their jurisdictions, and as a

keynote speaker during the Provincial Education Minister's Conference on Race and Multicultural Relations.

Mr. McIntyre also represents the Division on the Staff Working Group of the Government of Ontario's Cabinet Committee on Race Relations, assisting and advising on the policies and programs under review by the Committee.

In addition, the Race Relations Commissioner is conducting an operational review of the Division to determine the most effective means by which the Division can fulfil its mandate. It is expected that this review will have a significant impact on policy and program development in fiscal year 1986/87.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal year 1985/86 completes the third year of implementation of the provisions of the Code relating to handicap. Although a significant proportion of the complaints based on physical or mental handicap is handled in the regions, the Unit for the Handicapped performs a specialist and consultative role. Hence, the more complex complaints and issues relating to discrimination because of handicap are handled by the Unit. The Unit is also responsible for assisting the Commission to develop policy initiatives in the area of discrimination on the ground of handicap. A committee, chaired by Commissioner Catherine Frazee, has been established to review programs and policies in this area.

One of the policy areas examined by the Commission during the fiscal year was the application of the Code to employment-related medical examinations. This policy is discussed in detail later in this section of the Report. Questions about illness, injuries or medical histories, in the past or present may not be asked on an employment application form. In many instances, pre-employment medical examinations operate to screen out persons with handicaps.

Handicap is defined in the Code as any degree of physical disability, mental retardation or impairment, learning disability or mental disorder. In addition, since April 1985, a person may not be discriminated against because he or she has received Workers' Compensation benefits. The inclusion of "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act" in the definition of handicap allows injured workers who can perform the essential duties of the job to compete equally with persons who have not received such benefits. In addition, the exploration of reasonable accommodation of persons who have been injured on the job is included in the complaint process.

Statistics on the total number of complaints received indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 32 per cent of all complaints filed during 1985/1986.

ACTIVITIES 1985/86

Complaints of Discrimination

During the period of April 1, 1985 to March 31, 1986, the Commission received 431 formal complaints. Over this period, 302 complaints were closed with 197 settled, 47 dismissed by the Commission either due to lack of jurisdiction or lack of evidence to support the complaint and 58 were withdrawn by complainants.

Of complaints filed, 388 were on the ground of physical handicap and 43 were on the ground of mental handicap. The types of handicaps are shown in Table 5.

The Commission and Unit staff continued to examine major issues involving physical standards established for firefighters and police officers, such as visual acuity, colour blindness, obesity, diabetes and allergies, to ensure that employers' selection criteria and screening procedures are valid and job-related.

With regard to visual acuity, colour blindness and diabetes, Unit staff have worked closely with medical specialists, the Canadian Ophthalmologists' Association, the Canadian Diabetes Association, Provincial Fire Marshalls and Chiefs of Provincial Police Departments to establish valid and reliable criteria and testing procedures for standardizing the selection process in the recruitment of firefighters and police officers.

Settlements have been achieved in a number of complaints filed by handicapped individuals against insurance companies that have refused them coverage because they are believed to be at a greater risk than non-handicapped applicants. Many complaints have been resolved as a result of enforcing the provisions of the Code, which require that: (1) all assessments be made on individual merit, and (2) valid and reliable evidence be provided by the respondent to demonstrate that the exclusion is reasonable and bona fide.

The Commission has received complaints from physically and developmentally handicapped individuals with regard to equal access to education and transportation, and these are currently being investigated.

In addition, consultations were held with occupational therapists, physicians, vocational rehabilitation counsellors and other medical specialists about accommodation, aids and adaptations and to explore areas such as Physical Demands Analysis, Functional Capacities Assessments and medical reviews. These techniques attempt to determine the job performance ability and potential of individual complainants. Contacts have been established and maintained with agencies such as the Handicapped Employment Program of the Ministry of Labour, the Community Occupational Therapists Association (COTA), the Chedoke McMaster Rehabilitation Department, the Department of Optometry of the University of Waterloo, the March of Dimes, the Workers' Compensation Board, Vocational Rehabilitation Services of the Ministry of Community and Social Services and the Ministry of Education.

The staff assisted employers in their understanding of and compliance with the provisions of the Code by reviewing their pre-employment screening measures, such as advertising and application forms. In addition, employers were assisted in developing appropriate methods to determine the essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Educating employers about affirmative recruitment strategies was another important undertaking.

Similar activities sought to ensure equal treatment for persons with handicaps in the areas of services, accommodation and contracts.

Several interesting issues are exemplified in the following case summaries:

A neutral job requirement that all applicants must hold a driver's licence operates to exclude qualified persons who are visually impaired. Unless such a requirement is shown to be reasonable and bona fide, it is contrary to section 10 of the Code as it has adverse impact on handicapped applicants.

A significant settlement was reached in a complaint filed by a blind person who alleged that he was denied employment as a counsellor on the grounds that he did not hold a driver's licence. The respondent's position was that an essential duty of the job is to make calls on clients, and ability to drive an automobile is required for many of these visits. The employer also maintained that to provide the necessary accommodation for a blind employee would cause undue financial hardship.

The investigation showed that a driver's licence was not an essential requirement for the performance of the essential duties of the job as the complainant could arrange his own efficient and cost-effective transportation. The evidence indicated that the assigned territory could be geographically restricted to ease the travelling requirement. Moreover, the cost of the accommodation required was significantly less than that estimated by the respondent and would cause no undue hardship to the employer.

At conciliation, the respondent agreed to compensate the complainant in an amount representing one year's salary and to eliminate the requirement of a driver's licence, replacing it with the ability to provide one's own transportation for all positions except those involving a substantial driving requirement.

In April 1984 the first Board of Inquiry decision in Ontario on the ground of handicap was rendered in the complaint of Cameron against the Nel-Gor Nursing Home. The Board chairman found that the respondent nursing home had discriminated against Ms. Cameron when she was refused employment as a nurse's aide because of the belief that a congenital malformation of her left hand would prevent her from performing the job.

The Board ruled that once a prima facie case has been established, the onus shifts to the employer to prove that the handicapped person cannot perform the essential duties of the job because of handicap.

The Board found that despite her handicap, Ms. Cameron was capable of performing the essential duties or requirements of the job. The complainant was awarded the next available nurse's aide position in addition to $4,551 in compensation for lost wages, general damages and interest.

In September 1985 the respondent appealed the decision to the Divisional Court of the Supreme Court of Ontario. The Court dismissed the appeal. The respondent then applied for leave to appeal the Divisional Court's ruling. This application was also dismissed, with costs being awarded to the Commission. The complainant has subsequently received monetary compensation as ordered by the Board of Inquiry, which totalled $5,428, including accumulated interest.

The Board of Inquiry consent order in the complaint of White against the Liquor Control Board of Ontario may be found in the section on Boards of Inquiry in this Report.

The issues examined by the Board were whether or not Mr. White, an injured worker, was capable of performing the essential duties of the job, reasonable accommodation in the way of job modification and the LCBO employment policy that a worker returning to work after illness or injury must be 100 per cent fit to do the job in question.

During the course of this hearing, the parties reached a settlement, which was read into the Board order.

Public Education

The objective of public education is to inform persons with handicaps and their organizations about their rights under the Code. An additional purpose is to advise employers, business and industry, landlords and unions about the provisions of the Code and their application.

The staff provided educational and consultative services on a province-wide basis for business, industry, unions, vocational associations, professional associations, health care professionals, educational systems, inter- and intra-governmental agencies, voluntary groups and religious associations.

In addition, members of staff conducted seminars on the Code's provisions relating to handicap for supervisors and managers within the Ministry of Community and Social Services,Ontario Advisory Council on the Physically Handicapped, Personnel Association of Ontario, ABITIBI Company,the Canadian Association for Cerebral Palsy, the Council for Equal Employment of the Disadvantaged, Waterloo Region Community Legal Services, McMaster Legal Services of Hamilton, the City of Toronto's Equal Employment Opportunity Program, Simcoe County Board of Education, Fraser and Beatty, Barristers and Solicitors, the Georgian Bay Chapter of Occupational Health Nurses of Walkerton, the Ontario Association of Occupational Health Nurses Conference and the Metro Toronto Epilepsy Association. The staff also worked with a number of agencies for the developmentally handicapped throughout the province.

Interprovincial consultations were held with the human rights commissions of Alberta, Saskatchewan and Quebec.

The Commission has installed a TTD (telecommunication device for people who are deaf). The telephone number is (416) 965-6871.

Staff Training and Development

Training sessions for the Commission's staff on major issues and approaches pertaining to discrimination because of handicap are conducted on a regular basis at regional staff meetings and workshops.

The Commission continues to develop and acquire resource information about discrimination against disabled persons. These materials deal with such subjects as existing legislation that protects the rights of persons with handicaps, related legal interpretations and case law. This information allows staff to keep abreast of new developments in North America and overseas.

PROGRAM AND POLICY DEVELOPMENT AND RESEARCH

Employment Medicals

While the issue of employment-related medicals has not been considered under the Ontario Code, a recent Saskatchewan decision (The Saskatchewan Police Commission (1984) 5. CHRR D/2317) prompted the Ontario Commission to review and reassess its interpretation of the relevant provisions of the Code. In this case, the Saskatchewan Human Rights Commission decided to refuse to grant an exemption to the Saskatchewan Police Commission to allow them to conduct medical examinations of applicants for police officer positions before they had made an offer of employment in writing. The decision set out two additional conditions that must exist before a medical examination may be conducted: a reasonable occupational requirement that requires a certain physical ability must have been identified and the essence of the business would be undermined or the safe performance of duties would be threatened by persons who lack a certain physical ability.

As a result, the Ontario Human Rights Commission established the following position with regard to pre-employment medicals:

1. All employment-related medicals as part of the application process are prohibited.

2. Employment-related medicals will be considered "reasonable and bona fide" as per section 10(a) of the Code only if conducted under the following circumstances:

   (a) after a written offer of employment,

   (b) where the specific physical abilities required to perform the essential duties of a position have been identified,

   (c) where the medical examination is limited to determining the person's ability to perform the essential duties of the position,

   (d) where the essence of the business would be undermined or the safe performance of duties threatened by persons who lack these specific physical abilities or have a certain physical condition,

   (e) where reasonable accommodation for those failing to pass the test is included as part of the process.

Report on Absenteeism

A study of the application of the Code with respect to absenteeism was conducted in 1985. The research was used to develop guidelines for establishing a non-discriminatory policy on absenteeism in the workplace in instances where the time lost relates to a handicap as defined in section 9 of the Code. The Report concludes that the needs of employees who are unable to work for temporary or prolonged periods because of illness or injury must be considered in light of the protections provided in the Code.

The policy guidelines adopted by the Commission are as follows:

- The absenteeism must be related to a handicap as defined in section 9 of the Code.

- Medical evidence must exist to support the claim that the absenteeism is related to handicap as defined in the Code.

- The employer should establish a policy on attendance that is communicated to all employees and equally applied to all members of the work force.

- The employer should demonstrate that reasonable attempts have been made to accommodate an employee who has been absent due to illness. Alternatively, it must be shown that, under the circumstances, further accommodation was impractical or impossible in terms of cost, productivity, efficiency or substantial risk to other employees or the public.

Group Homes

Due to a growing trend toward integration, group homes for ex-offenders, ex-psychiatric patients and physically and mentally disabled persons have been established in the community in recent years. This new concept has met with a great deal of resistance in the community. The Commission has successfully resolved complaints of harassment in accommodation filed by residents and members of staff of a number of group homes.

As a result of consultations, members of the Inter-Ministerial Committee on Group Homes (Ministry of Health, Ministry of Community and Social Services, Ministry of Correctional Services and the Secretariat for the Disabled) met with the Commission to develop procedures to respond to community concerns about these facilities.

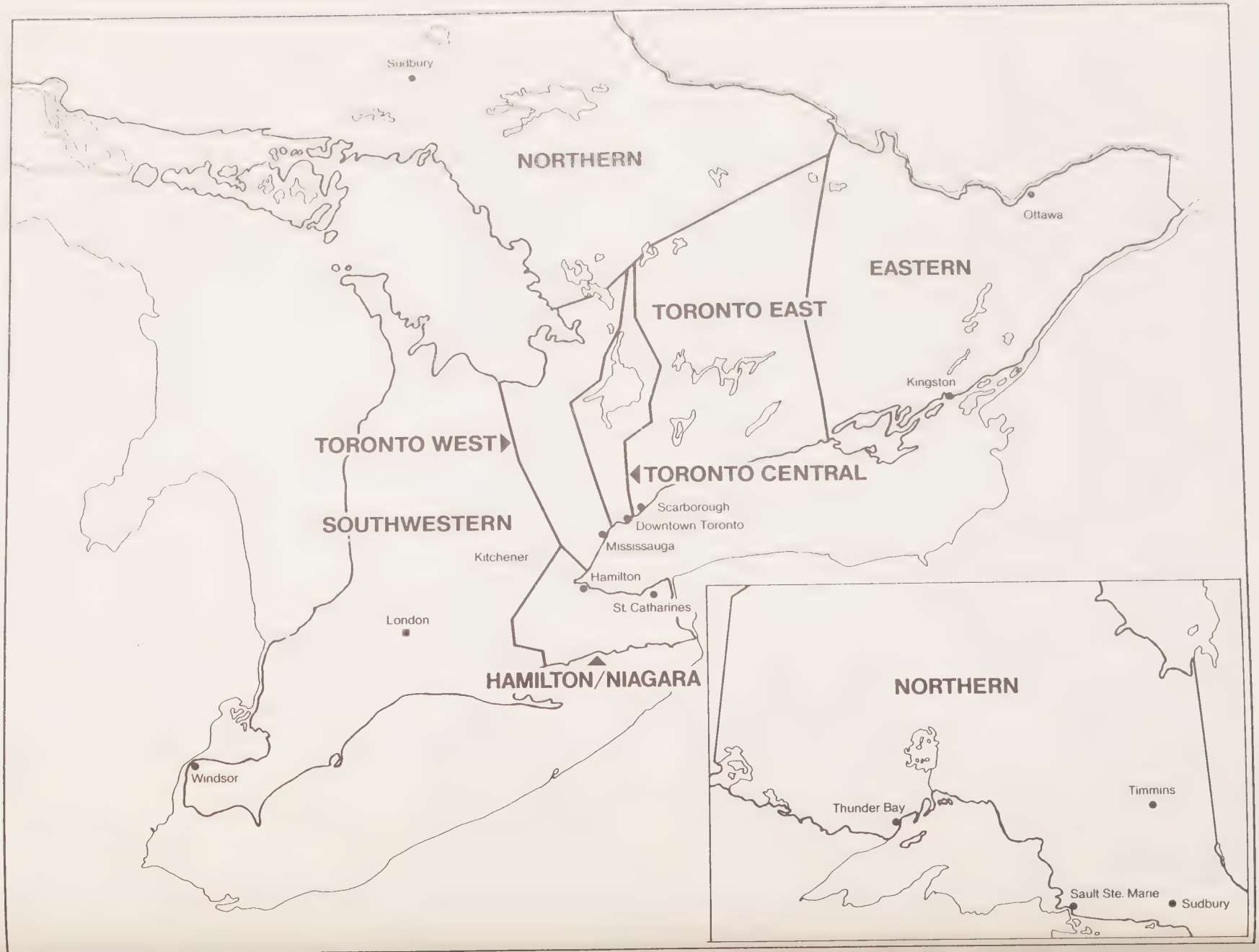
AIDS

There has been a growing number of inquiries about the application of the Code with respect to discrimination against persons with Acquired Immune Deficiency Syndrome (AIDS).

The Commission's policy is derived from section 9(b) of the Code which defines handicap to include "illness". Therefore, AIDS as an illness would fall within the definition of handicap. Persons with AIDS are protected under the Code in all social areas and may file complaints alleging the denial of the right to equal treatment without discrimination because of handicap.

INTERNATIONAL RESPONSIBILITIES

1983-1992 has been proclaimed the Decade of Disabled Persons by the United Nations. Following a second Federal-Provincial-Territorial Ministerial Conference on Human Rights in September 1985, ministers continued to express their support for the United Nations Decade of Disabled Persons and instructed the Federal-Provincial-Territorial Continuing Committee of Officials Responsible for Human Rights to engage in a consultation process for commitment to the issues of the disabled community during this decade.


Sudbury
NORTHERN
Ottawa
EASTERN
TORONTO EAST
Kingston
TORONTO WEST
TORONTO CENTRAL
Scarborough
Downtown Toronto
SOUTHWESTERN
Mississauga
Kitchener
Hamilton
St. Catharines
London
HAMILTON/NIAGARA
Windsor
NORTHERN
Timmins
Thunder Bay
Sault Ste. Marie
Sudbury

REGIONAL ACTIVITIES

1985/86

The Commission's programs are carried out in seven regions which comprise 15 district offices across the province, as indicated on the map on the facing page.

In 1984 the Conciliation and Compliance Division was restructured and reorganized to respond more effectively to the large increase in complaints, community problems, inquiries and referrals resulting from the new provisions of the Code. A major initiative of the Division has been to provide more effective services to the province by appointing two directors to supervise program delivery in all regions. One director supervises the Eastern, Hamilton-Niagara, Northern and Southwestern Regions as well as the Unit for the Handicapped, and the other is responsible for program delivery in the three Metropolitan Toronto regions.

Statistical tables reflecting complaints received during the fiscal year in each of the regions may be found in Table 1

Toronto Central Region

This region was created in 1981 when the Commission's caseload had expanded to a point where complaints in the Metropolitan Toronto area could no longer be effectively dealt with by the two existing regions, Toronto East and Toronto West. The boundaries of Toronto Central Region extend from the downtown core northward to Barrie and Burk's Falls.

The number of complaints registered during fiscal year 1985/86 stood at 313, which exceeds the number of complaints filed in any other region.

In fiscal year 1985/86, the region experienced an increase in complaints alleging discrimination because of handicap relative to those on other grounds. The 94 complaints based on this ground is second only to those based on race and colour which totalled 59.

The Commission has witnessed a greater awareness of and interest in human rights protection among Toronto's racial, ethnic and community organizations. Also evident is a growing trend for employers to request the Commission's approval of special programs under section 13 of the Code. Increasing numbers of employers have requested the assistance of staff in reviewing and amending their employment policies and practices to ensure that they comply with the provisions of the Code.

Although many of these employers have developed policies and programs to increase equality of opportunity for women and persons with handicaps, they are increasingly incorporating racial minorities into these plans and programs. For example, the Commission approved an affirmative action program under section 13 of the Code, thus enabling the North York Board of Education to collect data on the racial group membership of all applicants for positions with the Board and to gather and maintain such data on all employees. These measures will ensure that the Board will be able to monitor the progress of the special program, designed to increase the employment and promotional opportunities of members of racial minorities. The Board is providing regular reports to the Commission on the progress made under the program.

In addition to the Region's public education program, staff have developed and maintaining co-operative working relationships with employment and labour organizations, educational institutions and social service agencies in the Toronto area.

The Region dealt with several interesting issues that have significant implications for future human rights complaints. The Municipality of Metropolitan Toronto sought judicial review of the Commission's decision to assume jurisdiction in a complaint alleging discrimination because of marital status in the administration of social assistance benefits. The Divisional Court of the Supreme Court of Ontario dismissed this application and ruled that the type of welfare assistance under consideration falls squarely within the provisions of section 1 of the Code. In addition, a Board of Inquiry found that automobile insurance premiums based on sex, age or marital status are in contravention of the Code. This decision is under appeal.

Toronto East Region

The regional headquarters of the Toronto East Region were moved from downtown Toronto to Scarborough in 1982, thus ensuring that the Commission's services are easily accessible to the community. The increase in complaints and public educational commitments, evident since the Region was decentralized, indicates that the new office is meeting the needs of the Scarborough area. As well, in the four-year period since the office opened, the Region has witnessed a large increase in complaints from towns and cities beyond the Metropolitan Toronto area. The region includes Toronto's eastern suburbs and extends northward to Algonquin Park and eastward to Trenton.

The Region accounted for 189 complaints, or 14 per cent of the total complaints received by the Commission during the fiscal year. Of these, 59 related to handicap, 41 to race, 51 to sex and sexual harassment, 16 to age and the remaining 22 were distributed among all the other grounds.

Despite the increase in caseload, the staff have maintained a heavy public education schedule both in Metropolitan Toronto and major centres of the Region, such as Oshawa, other centres on Lake Ontario and the Peterborough and Lindsay districts. In most of these areas, public speaking engagements, seminars and workshops have been conducted in schools, with major manufacturers, employee groups, personnel associations and municipalities. A close liaison with all such organizations is maintained and encouraged.

Toronto West Region

The headquarters of this Region were also relocated in 1982 to the City of Mississauga. Toronto West includes Peel Region and part of Halton Region, extending to Oakville to the south and west. The regional boundary extends northward to the Nottawasaga Bay area.

The Region is heavily oriented to manufacturing and is developing rapidly in both industrial growth and population size. Indeed, the metropolitan Toronto area received 489 complaints alleging discrimination in employment, or more than 50 per cent of the 957 employment complaints filed throughout the province.

Complaints alleging discrimination because of handicap outnumbered cases registered on any other single ground, at 58. Complaints relating to the race and

colour provisions of the Code represented the second highest complaint category, at 45.

The Region's programs in public education and consultation were particularly active during the fiscal year; the staff participated in many undertakings with educational institutions, personnel associations, community organizations and senior-level managers and employers. However, the Region's major emphasis was placed on reducing a large backlog of complaints, since the volume of complaints in this heavily industrialized area had increased greatly in the past several years.

Eastern Region

The Commission's Eastern Region covers the geographical area east of Trenton, extending northward from Lake Ontario and the St. Lawrence River to the Quebec border. Its headquarters are in Ottawa and a district office is located in Kingston.

Located in the middle of a bilingual district, the Ottawa regional office offers its services in both official languages to all of its clientele. As human rights awareness rapidly transcends the confines of urban centres and moves into rural areas, more unilingual Francophones are exercising their rights under the Code.

One hundred and thirty-eight complaints, or 10 per cent of the Commission's total, were received in this Region during fiscal year 1985/86.

Complaints filed on the grounds of handicap and sex constituted the two largest categories during the fiscal year, followed by complaints based upon race or colour. These grounds accounted for 47, 33 and 16 complaints received in the region respectively. The investigation of complaints alleging discrimination because of handicap frequently revealed discrimination based on false and stereotypical assumptions about the abilities of persons with handicaps and an apparent hesitation to attempt to accommodate the needs of a prospective handicapped employee. Sexual harassment complaints increased in volume during the year and pregnancy-related complaints were on a steady rise. Each case potentially raised additional issues such as maternity leave, benefits, seniority, retroactive pay, salary revisions, promotional opportunities, attendance/absenteeism, risks to health and safety and reasonable accommodation. In this regard, five complaints initiated by women who were not entitled to retroactive salary increases while on maternity leave were successfully resolved. Changes to the employer's policy and practices were put in place to correct the discriminatory treatment.

The Region's programs in public education, consultations and race relations were particularly active during the fiscal year. The Eastern Region and the Race Relations Division hosted a symposium in August 1985, designed to introduce employers and senior managers to the Workbook on Equal Opportunity in Employment, produced by the Race Relations Division.

Northern Region

This Region, headquartered in Sudbury, has four district offices in Kenora, Thunder Bay, Sault Ste. Marie and Timmins.

The Northern Region constitutes 85 per cent of the province's geographical area and ten per cent of its population. For this reason, the regional staff, as well as Commissioners, have continued to expand the Region's outreach program to those

communities that do not have immediate access to the services provided by the Region's five offices. As well, toll-free telephone numbers have been provided to all residents of northern Ontario.

The region received 154 complaints during the fiscal year, with the majority alleging discrimination on the ground of handicap.

Several cases that were referred to Boards of Inquiry during the year were settled prior to the hearing. In one, a black man working in a junior management capacity for a large retail outlet store that is part of a nationwide chain alleged that he had been subjected to harassment because of race and colour. He further alleged that when he brought the matter to the attention of a senior manager, his complaint was ignored. He was later dismissed.

The investigation revealed that the complainant had been consistently teased and called racially derogatory names by his co-workers. Several employees had undermined his work performance so that he appeared inefficient and unable to meet production levels. The complainant had been dismissed as a result of his failure to meet these levels. His allegations were supported by several past and present employees of the store.

As settlement, the respondent company agreed to pay the complainant $17,000 for lost wages, moving expenses and general damages for mental anguish. In addition, the respondent agreed to hold a seminar for management at that location on the legal responsibilities of employers under the Code, and to the posting of a Code card in each store in Ontario.

Two mining companies were opened in the Hemlo gold fields during the fiscal year. Senior members of staff visited the area to assess the impact of these new companies on the employment of Native people residing in several communities bordering the Hemlo area: Manitouwadge, Marathon, White River, Pic Heron Bay Reserve, Pic Mobert Reserve and Heron Bay. The companies undertook affirmative recruitment efforts with Native Band Councils with a view to developing a labour pool of Native workers, including women for both traditional and non-traditional jobs. Officials of the Pic Mobert and Heron Bay Bands have worked with the companies in designing affirmative action strategies, which include basic skills development and employment orientation courses on both reserves.

The Commission's Chairman wrote to the companies advising them that the Commission is pleased with their efforts to date and will be reviewing their progress in hiring Natives in the summer of 1986.

In the area of consultations, a number of initiatives were launched during the year. Officials of the Timmins Public and Separate School Boards met with staff to discuss the development of race relations policies.

The Northern Supervisor continued to participate as a member of the staff working group of the Inter-ministerial Cabinet Committee on Native Affairs. The Committee reviews all aspects of the delivery of government programs to Ontario's Native communities.

Southwestern Ontario Region

The Southwestern Region comprises a number of primarily industrial or commercial urban centres serving a nearby agricultural heartland. The impact of the recession is

still being felt in some areas, and competition for jobs and accommodation is keen. The number of complaints filed during the year was 196.

The Commission's programs are delivered through district offices located in Windsor, London and Kitchener, with London as the regional headquarters. The Region includes Simcoe and Brantford, extends eastward to Guelph and continues up Number 6 Highway to Owen Sound and the Bruce Peninsula.

The larger communities are slowly accommodating their changing population mosaic as more racial minorities arrive and enter the work force. At the same time, women are assuming non-traditional roles in greater numbers, seeking work outside the home and in job categories previously closed to them.

There are six Native reserves in the area, and many Native people live in the cities.

In light of the Region's changing population composition and the increased emphasis on affirmative action and equal employment opportunity, the thrust of the Southwestern Region's educational initiatives have focused on these measures as additional long-term remedies for discrimination.

During the fiscal year, members of the Region's staff made presentations to the Lambton County, London and Windsor Boards of Education, the deans and senior officials of Fanshawe College in London, the Golden Triangle Area Affirmative Action Committee and Petrosar in Sarnia, and provided regular consultative services to these and many other groups. The staff also addressed the London Inter-ministerial Affirmative Action Committee, the affirmative action committees of three government ministries (Industry, Trade and Technology, Community and Social Services and Tourism and Recreation) and the Southwestern Regional Network for Affirmative Action in Education on the subject of systemic discrimination and affirmative action.

The University of Western Ontario, the Regional Municipality of Waterloo and the City of Windsor all received consultation services from staff regarding their affirmative action programs.

In the investigation of complaints, the number alleging systemic discrimination had increased, citing employment systems that were working against the equitable treatment of women, Native people, racial minorities and persons with handicaps. The staff established liaisons with the Ministry of Citizenship and Culture and Employment and Immigration Canada in various centres and requested data on the work force participation of racial and ethnic minorities, women and handicapped persons in order to conduct statistical analyses as a diagnostic tool to establish whether systemic discrimination has occurred, and upon which to form the basis for affirmative remedies.

Complaints alleging discrimination because of handicap continued to represent the highest proportion of the caseload at 41 cases. In many such cases the Commission and complainants are assisted in the resolution of complaints by self-help and community groups, which are well represented in most localities.

Another trend is the increase in inquiries and complaints alleging discrimination in accommodation on the grounds of race, family status, marital status and sex. This appears to have resulted in part from the lack of affordable family housing. Regional staff have consulted with landlords and local housing authorities and have participated in conferences on the issue.

In November 1985 a Board of Inquiry held in London addressed a complaint alleging discrimination because of race in housing accommodation. The complainant, a black woman, was awarded $2,500 in general damages and pre-judgement interest. This represents a high watermark in cases of this nature, in which damages have traditionally been significantly lower. The case should be a significant precedent in dealing with this ongoing problem.

Other regional Boards of Inquiry held this year highlighted issues of forced early retirement for police officers and firefighters, access to non-traditional jobs for women and sexual harassment.

Hamilton-Niagara Region

The Hamilton/Niagara Region was established in 1984 because the human rights issues in the Southwest had increased to the point where they could no longer be adequately addressed within the former regional boundaries.

Regional headquarters are located in Hamilton and there is a district office in St. Catharines. The Region covers the Golden Horseshoe and Greater Hamilton areas. The total number of complaints received during the fiscal year was 186, or 14 per cent of all cases throughout the province.

During fiscal year 1985/86, the Region saw an increase in complaints citing the grounds of race, age, sex and sexual harassment. The number of complaints based on handicap also increased during the year. Although the types of handicap varied widely, there was a substantial number of complaints alleging discrimination because of a back injury.

In the area of racial discrimination, the highest award of damages ever granted by a Board of Inquiry occurred in the case of Scott and Foster Wheeler. Having found that the employer discriminated against the complainant because of race and colour when it refused to refer him for work on a project in Jamaica, the Board awarded him damages in the amount of $49,913.93. The decision and order are under appeal.

Settlements were reached in three complaints initiated by the Commission against several taxicab companies alleged to have complied with requests of customers not to send an East Indian driver. Among the items of settlement was an agreement on the part of the respondents to publish their policies of non-discrimination in the local newspaper. Several additional complaints involving the same allegations against another taxicab company were referred to a Board of Inquiry when conciliation failed to achieve a settlement. The hearing was convened on March 19, 1986.

A heightened awareness of and interest in human rights and the provisions of the Code are evident among employers, unions and community groups in the Region. Plans are underway to organize a one-day seminar for management personnel early in fiscal year 1986/87.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1985/86

EMPLOYMENT

Handicap

The complainant was terminated from her job as a machine operator after one year when she suffered a work-related injury to her shoulder. While under treatment for the injury, the company's physician discovered a chronic condition affecting the tendons in her arm and advised the employer that the tendon condition could make her vulnerable to more injuries. The woman was dismissed with the explanation that the condition could render her unable to perform her duties. She was also informed that she should have revealed the condition in response to a question on the employment application form about her medical history.

Her complaint alleged discrimination in employment because of handicap as well as a violation of the provisions of the Code respecting permissible questions on application forms.

The Commission's investigation revealed that the complainant did suffer from a chronic condition of the tendons, related to repetitive arm movements in her previous job. However, her present job did not include the same repetitive arm movements. She had performed her duties as a machine operator with the respondent company for one year without any problems, and her shoulder injury was totally unrelated to her previous tendon condition. As a result, there was no evidence that her condition, either now or in the future, would affect her ability to do the job, nor was there any objective test carried out to determine whether or not the complainant was able to perform the essential duties of her current position.

The company's application form contained questions relating to handicap, age, marital status and family status, contrary to section 22 of the Code. It is Commission policy that such inquiries on an application form are inappropriate.

In settlement of the matter, the respondent agreed to compensate the complainant in the amount of $1,300, representing earnings lost before she found another position, and to amend its application form to ensure that the questions are in compliance with the provisions of the Code. In addition, a directive was sent to all employees setting out the company's policy of non-discrimination.

* * * *

The complainant, a man with diagnosed schizophrenia, had been employed by a manufacturing company for several months. He alleged that he was laid off, with the explanation that he had behaved aggressively towards several co-workers. His complaint alleged discrimination in employment because of handicap.

A Fact Finding Conference was held among the parties to the complaint to determine their positions with respect to the allegations and to attempt to effect a resolution of the complaint. Medical documentation was provided to show that the complainant's disorder was controlled. He had no problems in relating to and working with other employees. The evidence indicated that other employees both teased and harassed him. Any co-workers involved in fights were temporarily suspended, whereas the complainant was dismissed. The evidence supported the allegations.

The following settlement between the parties was reached at the conclusion of the Fact Finding Conference:

- the respondent agreed to compensate the complainant in the amount of $7,500 representing earnings lost during the period he was out of work;

- a human rights seminar was conducted for the respondent's employees;

- the respondent would post Code cards in the plant and in public areas of the company.

* * * *

The complainant had been employed as a packer with the respondent company for several months. In acordance with company policy, she underwent a medical examination before moving from probationary employment to regular employment. During the medical examination, she informed the company's physician that she had experienced loss of sensation and strength in one hand a year before, but had since had no recurrence of the problem. She alleged that she was subsequently dismissed with the explanation that the company doctor had diagnosed multiple sclerosis. She filed a complaint with the Commission alleging discrimination in employment because of handicap.

During the investigation, the company's personnel manager indicated that the physician had expressed concerns about the complainant's ability to perform her job in the future in the light of his diagnosis. However, her job performance during her employment with the respondent was described as excellent. In addition, the medical evidence provided by her family physician indicated that he had not confirmed a diagnosis of multiple sclerosis and had identified no recurrence of the symptoms of which she had complained a year before. There was no evidence to indicate that she could not safely perform the essential duties of her job.

The parties agreed to the following terms of settlement following conciliation:

- the respondent would compensate the complainant in the amount of $8,500 for earnings lost as a result of discrimination;

- the complainant would be placed on the recall list immediately;

- her seniority was restored, retroactive to the date of her dismissal;

- the respondent would write a letter of apology to the complainant.

The complainant was recalled shortly after the conciliation negotiations were concluded.

* * * *

The complainant was a man with a severe speech and hearing impairment who communicated by sign language. He had been employed as a warehouse worker with the respondent company for six months. He alleged that at the time of hiring he had been promised a wage increase after three months of service, but had not received the increase despite the fact that non-handicapped employees had been given a raise. As a result, he took the matter up with his supervisor and a dispute between them ensued. He was then dismissed. He filed a complaint alleging discrimination in employment because of handicap.

During the Fact Finding Conference, the personnel manager was asked whether any other employees had ever been dismissed following disputes with their supervisors. He admitted that the complainant had been the only employee to be released for this reason, and also confirmed the complainant's allegation that he had been the only employee to be denied a salary increase after three months. The company representatives had no explanation for the denial.

In settlement of the complaint, the respondent compensated the complainant in the amount of $1,200 representing wages lost because of discrimination and wrote him a letter of apology. He had obtained suitable employment elsewhere, and therefore did not request an offer of reinstatement from the company.

* * * *

The complainant, a woman with epilepsy, suffered a seizure several days after she had begun her employment as a waitress with the respondent restaurant. She was taken to hospital by ambulance, and returned to work two days later. She alleged that her employment was terminated two weeks after this incident and filed a complaint alleging discrimination because of handicap.

During the investigation, the respondent stated that the complainant's seizure had not been a factor in her dismissal, and that he knew that she was an epileptic at the time she was hired. Management employees and co-workers informed the Commission that the complainant frequently fell behind in her orders and reacted very negatively to the pressures experienced by staff during peak periods. The evidence indicated that the complainant lacked the ability to perform the essential duties of her position. The respondent's personnel records revealed that other waitresses had been dismissed under the same circumstances.

Following a review of the findings of the investigation, the complainant agreed that the evidence did not indicate that discrimination contrary to the Code had occurred.

* * * *

Race, Colour, Ancestry, Ethnic Origin, Creed

A woman of German origin who was employed as an assembler alleged that she and a co-worker worked on the same line. Her co-worker left the line, but the machine operator did not slow down his production. Consequently, several items were damaged. Although both of the assemblers were cautioned about the incident only the complainant was dismissed. Her complaint alleged discrimination in employment because of place of origin, ethnic origin and ancestry.

The investigation revealed that the complainant's job performance had been unsatisfactory during the three months she had worked for the company. Documentation indicated that she had refused several times to follow the instructions of her foreman and that her errors had caused damage to the product. The evidence gathered did not support the allegations. The case was dismissed by the Commission for the following reasons:

- the complainant had been employed with the respondent for three months as a box catcher. During that period she received several warnings about her job performance;

- the complainant's co-workers, the leadhand, her immediate supervisor and the Vice-President of Manufacturing, who is also of German origin, tried to assist the complainant, without success, to improve her performance;

- on September 28, 1983, she disregarded the company's guidelines and, as a result, several good boxes were discarded, causing the company financial loss. Her employment was then terminated;

- the complainant refused to co-operate with and take instructions from her leadhand because he is black. She often referred to him as "the black bastard";

- the workplace is very racially and culturally diverse and there was no perception of discrimination among employees who were interviewed.

* * * *

A black man of Barbadian origin had been employed as a welder by the respondent company for four years. He alleged that he was dismissed after his involvement in a

fight with two white co-workers. He stated that the only discipline received by the co-workers was a two-week suspension, despite the fact that one of them had initiated the dispute. He further alleged that the company's own investigation of the incident was prejudiced in favour of the white employees. His complaint alleged discrimination in employment because of race, colour, ethnic origin and place of origin.

During the investigation, the Commission's officer interviewed the company's labour relations manager, who had conducted an internal investigation of the matter. The manager claimed that several employees had stated that the complainant had been the only employee to be armed with a tool during the fight, and that the decision to dismiss him was based on this evidence.

The Commission established that ten employees - eight whites and two blacks - had witnessed the fight. However, only the whites had been questioned during the company's investigation. While they were asked if the complainant had used a tool in the fight, they were not asked if either of the white co-workers had been armed. Witnesses confirmed that two of the men had used tools, and medical records obtained from the physician who treated the complainant for his injuries confirmed that he had been hit with a sharp instrument.

The Commission also determined that prior to this incident, white employees armed with tools had been involved in fights. These employees had usually been disciplined by a two-week suspension.

Further evidence indicated that racial harassment and name-calling was a frequent occurrence on the shift in question, which was not the complainant's regular shift. Of the two black employees on the shift, one had made his superiors aware of his objections to the harassment, yet the company took no remedial action. A former employee, who is also black, informed the Commission that after he complained to his foreman of harassment he was transferred to another shift. This man resigned his position before reporting to his new assignment because he felt the proposed resolution of the problem was inadequate. Other statements made by the complainant's co-workers tended to confirm an atmosphere of racial bias among both workers and supervisory employees. The evidence indicated that discrimination had occurred, as alleged in the complaint.

In settlement of the complaint, the parties agreed upon the following terms:

- the complainant would be reinstated without loss of seniority;

- he would be compensated in the amount of $10,755.54 representing earnings lost as a result of discrimination;

- the complainant had initially been penalized by a one-week loss of pay and a notation on his personnel file that he had been involved in an altercation. The lost wages were restored and the notation removed from his file;

- the respondent agreed that a series of seminars on human rights and racial harassment would be conducted for all of its management employees.

* * * *

The complainant, a black woman of Guyanese origin, had worked as a clerk for the respondent company for four years and had consistently received positive evaluations of her work performance, and annual merit increases. She alleged that a new supervisor was hired after this period, and she began to experience discriminatory treatment with respect to opportunities for overtime and upgrading courses. She also received negative appraisals on her work record. Several months later, she was dismissed with the explanation that her work performance was below company standards. Her complaint alleged discrimination in employment because of race and colour.

At the Fact Finding Conference, the respondent claimed that the complainant's work record had been unacceptable for several months. However, documents and records revealed that the complainant's percentage of errors was lower than that of many of her co-workers and that she had been performing at levels equal to or better than many of her white counterparts. The weight of the evidence lent support to her allegations.

In settlement of the complaint, the respondent agreed to pay the complainant the amount of $4,000, in compensation for earnings lost because of discrimination and mental anguish. She had obtained alternative employment and did not wish to be rehired by the company.

* * * *

In accordance with section 31(2) of the Code, the Commission initiated complaints against three taxicab companies, alleging that they had honoured the requests of customers not to dispatch drivers who are of East Indian ancestry or origin. It was further alleged that in complying with such requests, the respondents had denied equal treatment in employment to qualified East Indian drivers, in contravention of the Code.

The complaints were initiated following reports of surveys of the three taxi companies by news reporters indicating that the companies discriminated against East Indian drivers.

The evidence was reviewed with the respondents at the Fact Finding Conference, and the following terms of settlement were agreed to among the parties:

- the respondent would provide a letter to the Commission indicating that it is and will continue to be an equal opportunity employer;

- the respondent would issue a letter of assurance to the Commission stating that it would uphold the provisions of the Code;

- the respondent would publish in the local newspaper a public notice of its non-discriminatory policy;

- the respondent would issue a memorandum to its dispatchers, other employees and management staff stating that honouring any discriminatory request for service would result in progressive disciplinary action up to and including termination of employment;

- the respondent would issue a memorandum from management to dispatchers and other employees stating that any discriminatory treatment of any employees on prohibited grounds of the Code would result in progressive disciplinary action up to and including termination of employment;

- the respondent would post the Commission's Code cards in all public premises and offices of the company.

* * * *

The complainant alleged that he had been harassed in his employment and unfairly disciplined by his supervisor because of creed, ancestry, place of origin and ethnic origin. He is a Christian of Turkish ancestry and origin.

Following a review of the allegations, the Commission decided to refuse to deal with the complaint under section 33 of the Code. Under this section, the Commission may decide not to deal with a complaint if it is not within its jurisdiction; is trivial, frivolous, vexatious or made in bad faith; the facts on which the complaint is based occurred more than six months before the complaint was filed; or there is a procedure under another Act that is more appropriate in the circumstances.

The Commission provided the following reasons for its decision to the complainant:

- the complainant has not denied that he made the mistakes for which he had been disciplined;

- the complainant has filed union grievances to deal with disciplinary action, which he believes was too severe;

- the complainant can provide no reasonable grounds for believing that he was discriminated against on religious grounds except that he was asked his religion on the company application form when he was hired for work seventeen years ago;

- the complainant can provide no reasonable grounds for believing that he has been discriminated against because of his ancestry, place of origin, ethnic origin or citizenship except for a generalized animosity that he believes Canadians harbour against Germans and Turks because of their role in history and in war;

- beyond a generalized belief that all "Canadian Christians" treat all "non-Canadians" and all "non-Christians" badly, the complainant can provide no

particulars of anyone other than himself being treated unequally on the grounds alleged;
- for these reasons, the Commission is of the opinion that the complaint is frivolous in that there is no factual basis for the complaint and the allegations are devoid of particulars;

- moreover, if the complainant is correct that the discipline imposed for acknowledged mistakes is excessive, that matter may be properly addressed through the grievance procedure.

* * * *

The complainant, a black Canadian, had worked as a service representative for the respondent for 11 years. Shortly before he filed his complaint, a co-worker used racially derogatory epithets, told racially disparaging jokes and called him racially offensive names. The complainant alleged that he brought the matter to the attention of his supervisor after two such incidents had occurred and told the co-worker that he had done so. However, the supervisor did not intervene, and the co-worker threatened to challenge him to a fight if he approached management again. The supervisor subsequently suspended both employees for two days with the explanation that they needed time to "cool off". The complaint alleged discrimination and harassment in employment because of race.

During the investigation, several employees indicated that they had witnessed several incidents of racial harassment involving the complainant and stated that the complainant's co-worker had always initiated the disputes that had occurred. The supervisor stated that he had suspended the complainant as well as the co-worker because he believed that "most disputes between workers have two sides." The complainant was the only non-white member of staff. The findings of the investigation tended to support the allegations.

In conciliation, the parties reached a settlement based on the following terms:

- the complainant's suspension was reduced and that of the co-worker was increased;

- the respondent agreed that the Commission would conduct a seminar on racial harassment and human rights for management and supervisory employees;

- the employer issued a directive to all employees stating its policy on non-discrimination and racial harassment.

* * * *

The complainants, who were Seventh Day Adventists, alleged that they had been employed as assemblers for the respondent manufacturing company for several weeks when they were told to work on the Friday evening shift. They informed their

supervisor that the shift would conflict with their Sabbath observances and offered to work any evening or night shift except on Fridays. When their employment was terminated because they refused to work the Friday evening shift, they filed complaints alleging discrimination in employment because of creed.

At the Fact Finding Conference, the respondent claimed that the complainants had stated on the employment application form that they were willing to work all three shifts. However, an examination of their applications revealed that they had advised they could work all shifts except for the period after sunset on Friday.

The Commission's officer explored the possibility of accommodating the complainants' religious beliefs. The respondent indicated that there were some departments that did not involve shift work. In settlement, the company agreed to reinstate the complainants and assign them to positions where they would not be required to work on Friday evenings or Saturdays.

* * * *

The complainant, a man of East Indian origin, alleged that he had been dismissed from his teaching position because of colour, ancestry, place of origin and ethnic origin. The respondent requested the Commission to refuse to deal with the complaint under section 33(1)(a) of the Code.

After reviewing the matter, the Commission decided not to deal with the complaint and provided the parties with the following reasons:

- the complaint was dealt with by a Board of Arbitration appointed under the Labour Relations Act. The Board of Arbitration ruled that the complainant be reinstated to his former position without loss of benefits, and he has been compensated in part for earnings lost. The Board of Arbitration found no evidence of unlawful discrimination, and the Commission is of the view that the award constitutes a fair and reasonable remedy.

- The Commission, therefore, is of the view that this matter has been appropriately dealt with under another Act.

* * * *

The complainant, who is of Trinidadian origin, alleged that his employment had been terminated because of race and colour. The Commission had refused to deal with the complaint under section 33(1)(d) of the Code, which provides that the Commission may decide not to deal with a complaint if the facts upon which it is based occurred more than six months before it was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

The complainant sought reconsideration of this decision under section 36 of the Code. During the reconsideration process, it was determined that the complainant had contacted the Employment Standards Branch and Ontario Labour Relations Board to discuss his concerns, but he had not been referred to the Commission.

The Commission reversed its decision not to deal with the complaint and provided the parties with the following reasons:

- the complainant, in good faith, did not file his complaint within the six-month period because he did not know that such an avenue of redress was open to him;

- although 11 months had elapsed between the alleged discrimination and the filing of the complaint, the respondent company would not be substantially prejudiced because many of the witnesses pertinent to the complaint were still employed by the company.

During the investigation, it was learned that the manager who had dismissed the complainant had not acted in accordance with the company's policy on progressive discipline, and that the complainant's race and colour had played a part in the decision to release him. In settlement, the company agreed to revise its personnel policies to ensure that they comply with the provisions of the Code and to compensate the complainant in the amount of $6,500 for earnings lost as a result of discrimination.

Sex, Sexual Harassment, Marital Status, Age

The complainant alleged that she learned that she was pregnant two months after beginning her employment as a clerk in the respondent company, and that she was dismissed from her job when her employer learned about her pregnancy. Her complaint alleged discrimination in employment on the basis of sex.

At the Fact Finding Conference, the complainant stated that her employer had asked her if she had any children during her job interview. The respondent admitted that when she informed him that she had a teenaged son and no pre-school-aged children, this influenced his decision to hire her. The evidence tended to support the complainant's allegations.

The parties agreed to the following settlement:

- the respondent compensated the complainant in the amount of $5,800 representing earnings lost as a result of discrimination;

- the respondent provided the complainant with a letter of reference;

- the company issued a directive to its employees setting out its policy of non-discrimination.

* * * *

The complainant had worked as a secretary with the respondent company for seven years under three different executives. She alleged that she was assigned to a new boss, who consistently made vulgar and sexually explicit remarks to her. When she was unable to convince him that these remarks were unwelcome, she raised the matter with the manager of the department and informed him that this conduct was undermining her ability to perform her job duties. She alleged that the manager advised her that she should resign. She did so and brought the problem to the attention of a senior executive in the company, who told her not to pursue the matter. She then filed a complaint with the Commission alleging sexual harassment in the workplace.

The investigation disclosed that other women who had reported to the manager in question had also been subjected to embarrassing and compromising remarks. Personnel records supplied by the company indicated that the complainant's work performance had always been excellent. The evidence gathered supported the allegations.

In conciliation, the following terms of settlement were agreed to among the parties:

- the respondent agreed to compensate the complainant in the amount of $9,700 representing earnings lost during the period in which the complainant looked for a new job;

- the company agreed that the Commission would conduct a seminar on human rights and sexual harassment for management and supervisory employees;

- the respondent would circulate a directive among all employees stating its policy on sexual harassment.

* * * *

The three female complainants had been employed as clerk-typists in the respondent company for periods ranging from several months to one year. They alleged that the manager of their department, a male, had made sexual advances towards them during the course of their employment. His repeated invitations to spend an evening with him had been refused, according to their allegations, and the complainants had made it clear that his suggestive remarks were unwelcome. All three women resigned their positions, but did not inform senior management that they had done so because of sexual harassment because they believed this would jeopardize their chances of obtaining favourable references from the company.

During the investigation, the Commission's officer interviewed other women who were employed by the company or who were former employees. Some of them stated they had also been subjected to sexual harassment by the individual respondent. Others had observed him making sexual advances towards his female employees. The weight of the evidence supported the allegations.

Following conciliation discussions, the following terms of settlement were agreed upon by the parties:

- the three complainants each received monetary compensation for earnings lost because of discrimination and mental anguish in the amounts of $9,000, $2,800 and $500;

- both the corporate and individual respondents wrote letters of apology to each complainant and letters of assurance of the company's non-discriminatory policy to the Commission;

- the corporate respondent instituted a policy with respect to sexual harassment and communicated the new policy to staff;

- the company's chief executive officer wrote to the individual respondent informing him that further sexual harassment on his part would result in serious disciplinary action. Copies of this letter were placed on his personnel file and sent to the Commission.

* * * *

An unmarried male employee of a Crown Corporation alleged that single workers who are transferred to another location are entitled to a one-month allowance for board and lodging, whereas married employees may receive a four-month allowance for this purpose. The complainant was transferred to Northern Ontario and given an allowance for one month's living expenses. He filed a complaint alleging discrimination in employment because of marital status.

At the Fact Finding Conference, the respondent confirmed that its Collective Agreement provided for a differential living allowance for married and single employees, in contravention of the Code. In settlement of the matter, the respondent agreed to reimburse the complainant for his living expenses for three months, which totalled $3,455.94 and to modify the Collective Agreement to remove the discriminatory clause. In addition, policy directives were issued to all supervisors advising them of the new policy.

* * * *

The complainant was employed as a cashier by the respondent company in 1974. She received a promotion to head cashier five years later. She alleged that when the position of assistant manager became available in 1985, she was passed over in favour of a male applicant who had less experience than she had, and whom she had trained. Her complaint alleged discrimination in employment because of sex.

During the investigation, the respondent claimed that the complainant had reached the limits of her ability as head cashier and, in any case, had not expressed an

interest in the promotional opportunity. The Commission's officer interviewed witnesses at the company and learned that the management had established an informal set of personnel procedures several years previously, when the work force was small. Problems with these procedures had developed as the staff increased. The evidence revealed that the managerial staff were all male and all other employees were female.

Interviews with the respondent's employees demonstrated that the complainant had always performed her duties very competently. The complainant's co-workers stated that most of the members of the managerial staff displayed a condescending attitude towards the female members of staff. The weight of the evidence supported the complainant's allegations.

During conciliation, the respondent agreed to compensate the complainant in the amount of $5,000 representing earnings lost because of discrimination and damages for mental anguish. Because the complainant had left the company for another poistion, she did not request a promotional opportunity. Other items of settlement included:

- a commitment on the part of the respondent to circulate a directive to all employees affirming its policy of equality of opportunity and setting out the policy that the company will base its promotional decisions on merit without regard to sex;

- a human rights seminar would be conducted for managers and members of the board of directors.

* * * *

The complainant alleged that she had worked as a waitress in the respondent restaurant for three weeks when the chef began making physical sexual advances towards her. These advances continued despite her repeated efforts to convince him that they were unwelcome. When the chef terminated her employment, she filed a complaint alleging sexual harassment. She also alleged that her employer had taken reprisal action against her because she had refused his advances.

At the Fact Finding Conference, the chef denied having made the advances. However, the restaurant manager admitted that he had conducted his own investigation of the matter when he questioned why a valued and competent employee had been dismissed. The manager acknowledged that an employee had seen the chef making sexual advances towards the complainant. The manager confronted the chef about the incident. The complainant's husband stated that she had informed him about these incidents and had also discussed them with her sister. The evidence lent support to the complainant's allegations.

During conciliation discussions, the parties agreed to the following terms of settlement:

- the restaurant manager and the chef wrote letters of apology to the complainant and jointly compensated her in the amount of $2,000 for earnings lost because of discrimination and for mental anguish;

- the president of the company, which is a chain operation, agreed to develop a policy on sexual harassment and circulate it to all employees.

* * * *

A 64-year-old male salesman alleged that his employer had significantly reduced his sales territory for the last three months of his employment, just prior to his retirement. He stated that a much younger person was hired during the period and was assigned to service most of the complainant's territory. His complaint alleged discrimination in employment because of age.

At the Fact Finding Conference, the respondent admitted a deliberate effort to phase the complainant out by reassigning his territory despite the fact that he had an excellent sales record with the company.

At conciliation, the complainant provided information indicating that he had lost $5,200 in sales because of the company's decision. The respondent compensated him in this amount, thus settling the complaint.

ACCOMMODATION, GOODS, SERVICES AND FACILITIES

Race, Colour, Ancestry, Ethnic Origin, Receipt of Public Assistance

A black woman alleged that she, her husband and three children had resided in the respondent apartment building for seven years without incident. When a new superintendent, who was white, took over the building with his wife and children, the complainant alleged that the white children of the superintendent began to call her own children racially derogatory names and to tease them whenever they went outdoors to play. On two occasions, the complainant called the police when her efforts to rectify the problem had failed. When the complainant and her husband attempted to discuss the problem with the superintendent and his wife, a dispute between the two couples developed. The complainant also alleged that the owner of the building did not take adequate steps to resolve the matter when it was brought to his attention. Her complaint alleged discrimination and harassment with respect to accommodation because of race and colour.

During the investigation, the complainant's neighbours informed the Commission's officer that they had witnessed the alleged incidents, and that the complainant's children had always been well behaved and were not responsible for starting any fights with the superintendent's children. Two neighbours said that they had overheard the superintendent telling his children that he didn't want them to play with blacks. The owner of the building confirmed that he had been made aware of the problem, but had only approached the superintendent about it on one occasion. However, he said that he had subsequently dismissed the superintendent for poor work performance, and he wished to resolve the complaint because the complainant and her family had been good tenants.

In settlement, the parties agreed that the respondent would compensate the complainant in the amount of $1,500 for the mental anguish that resulted from the discriminatory conduct.

* * * *

The complainant, who was in receipt of mother's allowance benefits, alleged that she and a friend were denied the opportunity to rent an apartment and were given the explanation that it was company policy to refuse any applicant who received welfare benefits. Her complaint alleged discrimination in accommodation because of receipt of public assistance.

The complainant stated at the Fact Finding Conference that she had informed the building manager that the combined income of herself and her friend was more than adequate to meet the rental payments. The respondent admitted that the allegations were true, but did not realize that the policy contravened the Code.

The parties then reached the following settlement:

- because the complainant had found suitable accommodation, she did not seek an offer of the next available apartment in the respondent building. The respondent agreed to compensate her in the amount of $200 representing out-of-pocket expenses and damages for mental anguish;

- the respondent informed the complainant that any application she may wish to make in the future would be considered on the same basis as all others;

- the respondent would write the complainant a letter of apology, and provide the Commission with a letter of assurance of its non-discriminatory policy;

- Code cards would be posted on the premises.

* * * *

The complainant, who was in receipt of workers' compensation benefits, had applied to rent an apartment in the respondent's building. He alleged that the landlord expressed the concern that he would not be able to pay the rent when his benefits ran out and that, in any case, the total family income was insufficient to meet the rent. On being refused the apartment, he filed a complaint alleging discrimination in accommodation because of receipt of public assistance.

At the Fact Finding Conference, the complainant pointed out that there were currently tenants in the building on social assistance, and he provided evidence that he had no debts and a good credit rating. Moreover, the complainant was paying more rent at his present address than the rental for the respondent's apartment. The respondent affirmed that he had a number of tenants who were in receipt of social

assistance and, in settlement of the matter, offered to rent an apartment to the complainant and to clean and decorate it at no charge in lieu of monetary compensation for insult to dignity. The respondent also provided assurances of his non-discriminatory policy and agreed to post Human Rights Code cards in the premises.

* * * *

CONTRACTS, GOODS, SERVICES AND FACILITIES

Marital Status, Handicap, Sex

The complainant, who had recently separated from her husband, alleged that she was informed by her insurance company that her automobile insurance premium had been increased from $300 per year to $1,200 per year because of her husband's poor driving record. She stated that the company refused to lower her rate despite her assurance that her husband no longer had access to her car. The company also refused her request that her policy be changed from family to single coverage. Her complaint alleged discrimination with respect to contracts because of marital status.

The complaint was dealt with by a telephone call to the respondent, which confirmed the company's position. When the Commission's officer explained the related provisions of the Code, the company agreed to raise the complainant's annual premium only to $320. When she informed the Commission that she had received a letter to this effect from the company, the complaint was closed.

* * * *

The complainant, a man who is deaf, alleged that he was denied an opportunity to obtain an interpreter by a police officer who was investigating an automobile accident in which he was involved. The complaint alleged denial of equal treatment with respect to services and facilities because of handicap.

The Commission's officer arranged a meeting with the complainant and officials of the Police Force, at which it was agreed that the Chief of Police would issue a standing order to all police officers advising them to ensure that an interpreter is provided to persons with a hearing impairment who are being questioned by the police. The complainant expressed his satisfaction with this settlement.

* * * *

The complainant had made an appointment with a sales representative of the respondent company to visit her home and show her a line of merchandise she was planning to purchase. She alleged that when the representative had shown her the product, she agreed to place an order for it. However, the representative informed her that he could not make the sale without her husband's approval, in accordance with company policy. She filed a complaint with the Commission alleging denial of equal treatment with respect to goods and services because of sex.

The Commission's officer contacted the sales manager of the respondent company, who explained that the policy had been instituted because the sales representatives had expressed concern that two home visits had been necessary on occasion, when the wife would not make a purchase without consulting her husband. The officer informed the sales manager of the provisions of the Code as they applied to the situation, and the company agreed to change its policy accordingly.

In settlement of the matter, the company telephoned the complainant, apologized for the inconvenience caused her and offered to make another appointment. The company notified its sales staff of the changes to the policy.

* * * *

EMPLOYMENT

Sex, Sexual Harassment

Allan, Wilson and Riverside Lodge, Chrysalis Restaurant Enterprises Inc., et al

The two female complainants alleged that they had been discriminated against in their employment as waitresses by being subjected to a requirement to wear a uniform that was more burdensome on women than was the dress requirement for male employees. They also alleged that they were refused continued employment because they had objected to the uniform.

The uniform that was the subject matter of the complaints was described by Ms. Allan, one of the complainants, as consisting of very sheer and flimsy material with slits exposing the hips. The complainant testified that she had dealt with the revealing aspects by pinning it at the hips and by wearing leotards or a danskin underneath it.

Ms. Allan further testified that she and other waitresses complained to management about the uniform, but to no avail. She stated that when she wore it, she was subjected to leering and joking and, on one occasion, intimate touching, by male customers.

The Board concluded, on the basis of the evidence of other waitresses who wore the uniform, that Ms. Allan's evidence of customers' reactions was exaggerated.

Ms. Wilson, the other complainant, also testified that she found it embarrassing to wear because she considered it too revealing. She reported to work wearing her own clothes after wearing the uniform for two or three weeks, but received a written warning from management that the uniform was mandatory. Ms. Wilson then resigned her employment. She testified that she felt that she had no choice but to quit in view of management's insistence that she wear the uniform.

Several witnesses gave evidence of having recurrent problems with customers as a result of the dress requirement. Other waitresses testified that they found the uniform unobjectionable and even appealing.

The Board reached the following conclusions on the basis of the evidence before it:

- for a term or condition of employment to be discriminatory on the basis of sex, the male and female employees of the respondent must perform the same or similar work. Males and females were not performing the same or similar work at Riverside Lodge; females were waitresses and males were doormen, busboys or, on occasion, bartenders;

- the uniform requirement was imposed equally on the respondent's male and female employees. Although the uniforms were not identical, the Code does not mandate unisex dress in the workplace;

- the uniform in question was consistent with commonly accepted social norms both within the restaurant/tavern trade and in the wider Ontario community.

With respect to the allegations of constructive dismissal, the Board found that the primary reason for Ms. Allan's layoff was her failure to attend a staff meeting about impending layoffs.

The complaints were dismissed. The Commission is appealing the decision to the Divisional Court of the Supreme Court of Ontario.

Newman, Roach, Petre, Crouse, Landsberg and F.W. Woolworth Ltd.

The five female complainants, all of whom were clerical workers, alleged that they had been denied an annual wage increase because of their sex.

The warehouse employees were predominantly male and the office workers were almost exclusively female. The complaints alleged that wage increases were granted to all employees in 1982, with the exception of the five complainants and one other female employee, who had their wages frozen. The complainants did not feel that they had been given an adequate explanation why their wages had been frozen.

The evidence introduced by the complainants and the Commission alleged that this action was the result of systemic discrimination practised by the company against females as part of an advertent or inadvertent corporate policy.

The respondent then offered evidence to establish the financial and organizational reasoning behind the decision to impose the wage freeze in 1982. The employees had voiced dissatisfaction over the wages and wage structure in the office in 1981. They were concerned about disparities between the office staff who were receiving very different wages and yet were doing very similar work. The company therefore undertook a review and reorganization of the wage structure, in an attempt to create internal parity of wages based, in part, on a comparison with what its competitors were paying for similar jobs.

Management concluded that they were paying lower than average wages in the junior positions and higher than average in the senior positions (positions held by the complainants). Measures were therefore taken to increase the wages of virtually all members of the work force while imposing a freeze on the wages of six female employees because the salaries paid them were considered to be beyond the value of the job performed.

Accordingly, all of the warehouse employees received the 1982 increase, as did 62 of the 68 office employees. The Board found, as a fact, that the conclusions drawn by the respondent were justified on the basis of the data it had received with regard to its competitive position. It was the view of the Board that "no facts established, nor could any reasonable inference be drawn, to suggest that the employer decided to impose a wage freeze on the affected people because of their sex."

The Board observed, however, that the decision to impose a wage freeze on six individuals in a work force of close to 300 is a delicate matter. All six employees affected were long-term, capable and dedicated employees. "From a human standpoint, the way the respondent handled the matter at the time created a well-justified feeling of unfairness and discrimination in the minds of the complainants."

Piazza and Airport Taxi Cab (Malton) Association, Mann

The complainant alleged that she had been dismissed from her employment as a secretary after three months because she had refused the sexual advances of her employer, who was the president of the Association.

The Chairman of the Board of Inquiry observed at the outset of his decision that the evidence had been conflicting, and much turned on an assessment of the credibility of the parties.

The sharp conflict in evidence began with the complainant's terms of employment. She testified that she was under the impression that her position was a permanent one. In contrast, the individual respondent testified that she had been hired as a temporary replacement for the Association's secretary-treasurer. The Board found on the evidence that the complainant had been hired as a secretary, because she did not meet the qualifications and requirements of an officer of the Association as set out in its by-laws.

The complainant testified that the president's verbal and physical advances began a month after she was hired and continued for several weeks with invitations to go out for drinks. She stated that she agreed to accompany him on one such occasion because she expected that this would appease him and that he would stop bothering her. When she told him that she wished to go home, he drove her to a secluded place and forced a kiss on her.

The individual respondent then began asking the complainant to drive him home after work. She testified that she complied with these requests several times, but later refused when the physical advances continued. Shortly after her refusal to accompany him after the working day, he terminated her employment, giving the reason that she had been absent from work the previous day. The complainant testified, however, that she had not been absent, but had left early to make a business delivery at the airport.

In his testimony, Mr. Mann, the individual respondent, denied all of the complainant's allegations respecting sexual harassment. The Board found weaknesses and inaccuracies in his testimony.

The Board stated, however, that the fact that the complainant continued to consent to drive in a car with the respondent, despite his advances, raised the suspicion that these advances were not unwelcome. The Board accepted the complainant's evidence, however, because the respondent did not offer the complainant's consent as a defence, and the Board Chairman did not believe the respondent's outright denial of physical contact with the complainant.

The Board's conclusion was supported by the similar fact evidence of a former female employee of the respondent, who testified that she had been dismissed for refusing the president's sexual advances.

In finding for the complainant and the Commission, the Board Chairman concluded that the complainant had been subjected to an intimidating and hostile working relationship. Considering the close working relationship between the complainant and Mann, it is believable that she was intimidated by him and tried to keep the relationship a business one in the face of his continuing attempts to socialize with her.

The Board further found that sexual harassment was the proximate cause of the complainant's dismissal, contrary to the Code.

Accordingly, the Board made the following order:

- The respondents were jointly and severally liable to pay forthwith to the complainant the following:

  - as special damages for lost wages, the sum of $2,750;

  - as general damages, the sum of $250;

  A total amount of $3,000.

- The respondents shall desist from any sexual harassment of any and all employees who currently are employed by or who may be employed by the respondent Association.

- The respondent Association shall immediately post in their offices a Code card.

Creed, Race, Colour, Ancestry, Place of Origin

Ontario Human Rights Commission, O'Malley (Vincent) and Simpsons-Sears Ltd.

Ms. O'Malley, now Vincent, was employed as a full-time sales clerk by Simpsons-Sears Ltd. It was a condition of employment that full-time sales clerks would work on Friday evenings on a rotating basis, and on two Saturdays out of three. While she was employed by the respondent, Ms. O'Malley became a member of the Seventh-Day Adventist Church. A tenet of this faith is that the Sabbath must be strictly observed; Sabbath extends from sundown Friday to sundown Saturday. As a result, the complainant could no longer, consistent with her new faith, work for her employer on Saturdays. When she informed the respondent's personnel manager of her conversion he informed her that Saturday work was a requirement and she would be discharged if she could not work on Saturdays. She was later offered part-time employment, which she accepted. She worked about one-half the hours formerly required and suffered a consequent reduction in her earnings and fringe benefits. Ms. O'Malley filed a complaint alleging discrimination in employment on the basis of creed contrary to section 4(1)(g) of the Ontario Human Rights Code, R.S.O. 1980, c.340.

Although the Board of Inquiry found that an intention to discriminate is not an essential element of a contravention of section 4(1)(g) of the Code, he dismissed the complaint concluding that the Commission had not satisfied its onus of establishing that Simpsons-Sears had acted unreasonably in the steps that it took to accommodate the complainant after learning that the requirement to work on Saturdays was incompatible with her religious observance.

The Commission's and complainant's appeal to the Divisional Court of the Supreme Court of Ontario was dismissed. Mr. Justice Southey, writing for the majority, held that intent is an essential element of discrimination, and since Simpsons-Sears had no intent to discriminate, there was no contravention of the Code.

The Commission and complainant then appealed to the Court of Appeal. The Court held that there could be no breach of the Code unless the employer intended to discriminate on one of the prohibited grounds. The Court held that there was clearly no such intent, and the appeal was dismissed.

The matter was appealed to the Supreme Court of Canada. In a unanimous judgement, the appeal was allowed with costs.

The Supreme Court of Canada ruled that human rights legislation is of a special nature and it should be given an interpretation that will advance its broad purposes as set out in the preamble to the Code. The approach of the Code is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action that is significant.

The Court was of the view that the courts below were in error in finding an intent to discriminate to be a necessary element of proof. The proof of intent should not be a governing factor in construing human rights legislation. Since human rights legislation is concerned with consequences of conduct rather than punishment for misbehaviour, it was not necessary to prove that there was an intent to discriminate against the complainant.

In this case the employer's policy required full-time sales staff to work on Saturdays, which was contrary to the complainant's religious beliefs. The Court decided that an employment rule, honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply, may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. This is adverse effect discrimination, also known as constructive or systemic discrimination. In this kind of situation the employer has a duty to accommodate the complainant short of undue hardship; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

With respect to the burden of proof, the Court held that the complainant must show a prima facie case of discrimination. Where adverse effect discrimination on the basis of creed is shown and the offending rule is rationally connected to the performance of the job, the employer is not required to justify it but rather to show that he or she has taken such reasonable steps toward accommodation of the employee's position as are possible without undue hardship. The Court was of the view that the Board of Inquiry was in error in assigning to the Commission the burden of proof with respect to accommodation.

The respondent was directed to pay to the complainant as compensation the difference between the sum of her earnings while engaged as a part-time employee of the respondent from October 23, 1978 to July 6, 1979 and the amount she would have earned as a full-time employee during that period.

Randhawa and Lido Industrial Products Ltd., Ondrey

The complainant, a man of East Indian origin, alleged that the layoff of employees of which he was a part was a discriminatory layoff during which the corporate respondent showed a bias in favour of persons of Polish and Eastern European extraction. Mr. Randhawa alleged that he had been discriminated against in his employment on the basis of race, colour, ancestry and place of origin.

In his testimony, the complainant stated that throughout the nine-year period of his employment, he had never been laid off and had received regular increases in salary. He said that he had at no time received any complaints about his work performance. Also, although he had the longest term of employment in the Shipping Department, no other employee in that department was laid off at the time in question.

Evidence introduced by the Commission at the hearing showed that of the eleven senior employees who were laid off, none were Polish, despite the fact that 34 per cent of all plant employees was of Polish origin.

The complainant's former supervisor testified that the complainant had performed his duties to the same level as other workers in the Shipping Department, and that he had requested that the complainant be kept on. However, one of the owners of the corporate respondent told the supervisor that he had laid off employees with the most seniority as a cost-saving measure, because they were the highest paid workers. Moreover, by the end of the year, all but two employees in the Shipping Department had been laid off.

The Board accepted the respondent's evidence that Mr. Randhawa was part of a large layoff in which 60 workers were dismissed. Thirty of those 60 were of Polish extraction, while 34 per cent of the total work force was Polish. Moreover, the percentage of the work force that was non-white did not decrease as a result of the layoff.

Other evidence introduced by the respondent indicated that the company had experienced serious financial difficulties since 1975 and had decided, in 1982, to reduce its labour force significantly in all departments. In 1983 the corporate respondent filed a proposal under the Bankruptcy Act.

The Board concluded that "clearly, economics were a factor, and probably the only factor which led to the dismissal of Mr. Randhawa as well as 60 other employees in May 1982. There is no convincing evidence to lead to the conclusion that any issue including ethnic origin was a factor in this layoff."

The complaint was dismissed.

Scott and Foster Wheeler Ltd.

Mr. Scott, a black Canadian citizen trained as a boilermaker-welder, alleged discrimination in employment on the basis of race, colour and place of origin. In his

complaint, Mr. Scott alleged that in early 1982 he expressed interest in, and was encouraged to apply for, a position as welder with the respondent for a project to repair a boiler in Jamaica, but was ultimately denied this position. In his testimony before the Board of Inquiry, the complainant alleged that he was informed that he would be the first applicant to be sent to the project because of his successful welding test results. However, of the first six names on the applicant list, two were deleted - his and that of a black co-worker. Mr. Scott further testified that he was informed that the company did not want any more black workers because they had experienced considerable difficulties with another black welder on the project.

The Board of Inquiry found that, based on the evidence and on a balance of probabilities, the decision of the project superintendent and, ultimately, of the company not to hire Mr. Scott was influenced by race, colour or place of origin.

The Board addressed an additional issue. Counsel for the respondent had contended that the Board lacked jurisdiction because, if a discriminatory decision had been made, it was made by the company in Jamaica, and the case was therefore outside provincial jurisdiction. This contention was rejected by the Board because the complainant had applied for employment in the province of Ontario to an employer subject to the law of Ontario. The case therefore fell under the jurisdiction of the Code.

The hearing was bifurcated at the request of the respondent, and the remedy was determined at a later date.

Based on the evidence that the complainant was a skilled welder and a competent and hard worker, the Board Chairman rejected testimony from the superintendent that the complainant was not willing to "pitch in" and that he was not capable of hard work.

The Board assessed special damages by way of comparison with the work experience of the four successful candidates on the Jamaica project. Assuming that Mr. Scott would have worked for the same 27 weeks' duration had he not been discriminated against, his entitlement to lost wages, less the amount he earned working elsewhere, totalled $27,806.48. Lost pension plan contributions and health and welfare benefits amounted to $2,579.85.

Mr. Scott testified that the experience of discrimination was "one of the most devastating things that ever happened to me in my life." Recognizing the very serious effect that the discriminatory act had on Mr. Scott, the Board awarded general damages in the amount of $4,500. Interest on these amounts awarded was $15,027.60. The total award was $49,913.93.

The respondent is appealing the decision and order to the Divisional Court of the Supreme Court of Ontario.

Handicap, Age, Record of Offences

White and the Liquor Control Board of Ontario, Tanner

Mr. White began his employment with the Liquor Control Board of Ontario in October 1978. In performing his job as a store clerk, he sustained an injury to his back while unloading heavy cartons of alcohol from a conveyor belt in 1981. Following his recovery from surgery to remove the fractured spinal disc, he was

cleared to return to his job by his family physician with the provision that he should not lift or carry heavy objects. When he attempted to return to work, he was advised by the LCBO that he would not be allowed to resume his position unless he could perform all of the duties.

The complainant then attended the Workers' Compensation Board Hospital and Rehabilitation Centre, where he participated in a program of physiotherapy, exercise and rehabilitation. At the end of his treatment, he was able to lift 50 pounds and carry 20 pounds. However, once again he was not allowed to return to his job unless he could perform all of the duties, which included lifting and carrying heavy cartons for prolonged periods.

Mr. White then filed a complaint alleging discrimination in employment because of handicap.

During the Commission's investigation, the respondent maintained that there were no classifications or positions involving light duty. The employer's policy provided that when an employee returns to a regular position following an injury, he or she is allowed a two-week "rehabilitation" period, during which the job duties would be modified to avoid heavy lifting. However, following this time period, the employee must be declared medically capable of performing all of the duties of the position in question. The respondent further stated that job modification was not considered in the complainant's case because it would have been unfair to the other store clerks, who were required to perform all of the job duties.

When the complaint could not be resolved in conciliation, it was referred to a Board of Inquiry.

Medical testimony before the Board revealed that Mr. White was physically capable of performing the essential duties of his job, except for the heavy repetitive lifting, which appeared to be a minor part of the job.

The Board heard the evidence of other employees with similar handicaps who testified that they had been accommodated with respect to their jobs. It appeared that some employees perform more physical labour while others do more of the office work. There was considerable flexibility in the job assignments allocated by store managers to the clerks. These employees had been accommodated without any disruption or undue hardship to the LCBO's business operations.

Following the conclusion of the Commission's case, the LCBO approached the Commission's counsel with the following proposals of settlement:

1. The LCBO shall return Ronald White to work forthwith to his position of "Clerk III" with the LCBO on the basis that:

    (a) LCBO will not require Mr. White to engage in prolonged heavy lifting or in prolonged frequent turning and bending during the discharge of his tasks as a Clerk III. More particularly:

        (i) Mr. White shall not be required to participate in the unloading process; and

        (ii) Mr. White is capable of servicing the stock, replenishing display racks and taking cases to the showroom area provided that:

(a) when he picks up a case, he is able to confront the case;

(b) he is required to lift cases weighing less than 50 pounds from a height above his shoulders, subject to his medical restrictions;

(c) he is able to transport cases using a buggy; and

(d) he does not perform this type of work continuously and, when he does perform this work, he works at a pace consistent with his disability and medical restrictions;

(b) The LCBO shall restore Mr. White to a Clerk III position with seniority accumulating from December 15, 1981 to the present, in accordance with the provisions of the Collective Agreement between the LCBO and Ontario Liquor Boards Employees' Union dated July 1, 1983 and the LCBO shall restore Mr. White at the rate of wage he would receive under the Collective Agreement had he worked continuously with the LCBO from December 15, 1981 to the present;

(c) The LCBO shall bring up to date from December 15, 1981, all rights and benefits to which Mr. White would be entitled under Article XV of the Collective Agreement as though he had worked continuously as a Clerk III from December 15, 1981 to the present.

(d) Mr. White shall receive vacation credits totalling 19 days for the years 1981 and 1985 and attendance credits totalling 48 3/4 days.

2. The LCBO shall pay Ronald White forthwith the sum of $9,000 as damages to be allocated as follows:

(a) $7,000 as special damages for loss of salary between June 1, 1983 and May 30, 1984 and interest thereon; and

(b) $2,000, as general damages.

3. The LCBO states that it abides by the requirements imposed upon employers by the Human Rights Code, 1981, and, in this regard, the LCBO understands that the Code requires it to afford reasonable accommodation to handicapped applicants and employees, and that the abilities of handicapped applicants and employees to perform any job are to be assessed on an individual basis. The LCBO states that it is presently reviewing its employment practices to ensure that they conform with the requirements of the Code.

The settlement was read into the record by the Board of Inquiry Chairman, who then made a consent order on the basis of the settlement before him. However, since the matter was resolved between the parties before the conclusion of the Board of Inquiry, there was no decision from the Chairman.

Underwood and The Board of Commissioners of Police for the Town of Smiths Falls, Murphy

The complainant alleged that his application for employment as a Police Constable was rejected because he was 40 years old. When conciliation did not result in a settlement, the Commission requested that a Board of Inquiry be appointed.

The investigation disclosed that there were two available positions of Police Constable with the force, for which 60 persons applied.

The Board accepted the Commission's evidence that age was a major factor in the evaluation of applicants. The oldest candidate whose application survived the initial screening was 31. The respondent's only witness admitted that Mr. Underwood's application was superior to that of one of the successful candidates, and, if not superior, at least equal to that of the other. In the view of the Board, the evidence showed as well that during the course of the investigation, the Police Chief and members of the Board had indicated that age was a consideration.

In the Board Chairman's discussion of remedy, he observed that the respondent's reluctance to co-operate with the investigating officer verged on obstructing him in his duties. Moreover, the Police Chief did not bring the employment applications to the hearing as he was directed to do by a summons.

In addition, the Board stated that "the injury the complainant has suffered is made more serious by the discrimination having been practised by a public body, whose judgements are bound to be more publicized, and far more likely to be assumed by the public to be sound, than would those of a private organization."

"Having regard to the nature and extent of the complainant's suffering, to the need to ensure proper respect for the law established by this legislation, particularly on the part of a body that is not only public, but whose function is law enforcement, and to the obstructive tactics employed on behalf of the Board, verging at one point on being in contempt of the Board of Inquiry, I have assessed the general damages to be awarded to the complainant in this case at $3,000. If I had been of the view that no punitive element could or should be a factor in assessing these damages, I would have assessed them in the amount of $2,000."

It was further ordered that, to assure compliance with the Code in respect of its future practices, the Board of Commissioners of Police for the Town of Smiths Falls:

- permit the Ontario Human Rights Commission, through its officers or agents, at some reasonable time or times convenient to both parties, to view the Board's application forms and to review its recruitment procedures to ensure that they are in compliance with the Code;

- to prepare and submit to the Commission for its approval a written policy statement expressing its understanding of the application of the Code to its recruitment procedures and its intention to comply with the requirements of the Code; and

- to provide the Commission with its undertaking to make this policy statement known to its employees and to applicants for employment.

Lancaster and Zeller's Inc. et al

The complainant applied for the position of a loss prevention officer with the company in 1983. The employment application form asked if the applicant had ever been convicted of a criminal offence, had ever been employed by the company and knew any persons who worked for the company. He responded in the negative to these questions, was hired and, for several months, served satisfactorily in the position.

Employees of the respondent later learned that the complainant had been employed by Zeller's 16 years previously, at the age of 22. He was found to have stolen goods valued at less than $50 from the company, and for this reason he had been dismissed. He was charged and convicted of the crime. In 1977 he was granted a pardon by the Governor-General in Council. Between 1977 and 1983, the complainant held several jobs related to security.

When the fact of his earlier dismissal came to light, the respondent dismissed him because he did not answer the questions on the application form truthfully. He continued to withhold information concerning his past employment with Zeller's during the course of the company's investigation and it is company policy not to rehire anyone who has been discharged for theft of company property. Moreover, these actions were considered by the company to be incompatible with a position involving substantial trust, such as the position of loss prevention officer. The complainant then filed a complaint alleging discrimination in employment because of a record of offences.

When a settlement could not be achieved in conciliation, the complaint was referred to a Board of Inquiry.

In addressing the provisions of the Code under which the complaint was filed, the Board of Inquiry was of the view that the law makes it clear that an individual cannot be discriminated against in employment because of a conviction under the Criminal Code for which a pardon has been granted. The Board then stated that "it is equally true that an employer can ask what relationship, if any, the conviction as an act bears upon the employee's ability to perform the job being sought."

The Board accepted the respondent's evidence that the company had been unaware of the fact that charges had been laid and a conviction entered for the theft that resulted in the dismissal of the complainant in 1967. The issue was whether the complainant had been discriminated against in employment because of his record of offences.

The respondent testified that the complainant's dismissal did not flow from the conviction. Rather, it was based on the misrepresentation made by the complainant on his application form. The Board found, on the evidence before it, that the misrepresentation made by the complainant concerning his past employment with the company was a matter central to the kind of job that he was seeking. The Chairman stated, "Indeed, the complainant himself recognized this when he explained the reason for not disclosing the truth. He hoped that he could prove himself on the job."

The Board was of the view that it could not question the employer's substantive decision not to rehire employees whom it had discharged for theft, and found that the corporate decision not to rehire such employees had no connection with a conviction for an offence. The complaint was therefore dismissed. The Commission has sought leave to appeal the decision to the Divisional Court of the Supreme Court of Ontario.

ACCOMMODATION, CONTRACTS, GOODS, SERVICES, FACILITIES

Race, Colour, Age, Sex, Marital Status, Family Status

Reese and London Realty and Rentals Ltd., Davies, Clement

Mrs. Reese, who is black, alleged that she was refused rental accommodation by the respondent because of race and colour.

She testified during the hearing that she had telephoned the respondent rental agent, Mrs. Clement, in response to a newspaper advertisement for rental housing. Mrs. Reese stated that Mrs. Clement told her about two additional rental properties in the same neighbourhood. Upon discussing the features of all three properties, Mrs. Clement believed, according to Mrs. Reese, that the house at 34 Brentwood would be the most suitable for the Reese family.

Mrs. Reese further testified that she drove past the three properties and then telephoned Mrs. Clement to arrange an appointment at 34 Brentwood for the following day, June 8. She stated that she arrived first at the Brentwood house. When the rental agent arrived and met Mrs. Reese, she told her that the tenants had failed to provide her with the key, as they had promised to do, and, therefore, she could not show the house to Mrs. Reese.

The Board found it somewhat difficult to accept the rental agent's claim regarding the key because the evidence indicated that the tenants were motivated to show the house since they had requested an early termination of the lease.

Mrs. Reese then asked the rental agent to show her the other two available properties in the neighbourhood. However, the agent replied that those houses had already been rented.

The respondent rental agent testified that when she was unable to show Mrs. Reese the Brentwood property, she told Mrs. Reese that she would again try to obtain the key from the occupant. However, she claimed that by the time she had again contacted Mrs. Reese, the Brentwood house had been rented.

The Board concluded that the rental agent had acted with unusual haste to rent the Brentwood house after Mrs. Reese showed a clear interest in the property. It was also the Board's opinion that the agent had not wanted to rent the other two properties to Mrs. Reese, who was told they had been rented.

The evidence before the Board indicated that the two properties had not been rented by June 8, the date on which the rental agent met Mrs. Reese. The lease applications had not been completed until June 10 and June 11.

Mrs. Reese further testified that her husband, who is white, had suspicions about the events of June 8. He therefore telephoned the rental agent to inquire about the advertisement and was told that the two properties were still available. He made an appointment, under an assumed name, to view the two properties. Mr. Reese and a white friend, who posed as his wife, met with the rental agent at one of the properties and were assured that it was available.

After these events, Mrs. Reese confronted the rental agent with the fact that her husband and a friend had viewed the house and were told that it was for rent. When Mrs. Reese asked why she was denied the opportunity to apply as a tenant, she was told that the people in that neighbourhood are prejudiced.

At the time of the complaint, Mr. Davies was the President of the respondent company. He had the power to overrule and correct the wrong done by his rental agent, and the Board found that he had grounds to suspect that the agent acted on her prejudice against black people when handling properties in the neighbourhood in question. The Board Chairman cited evidence that while the respondent had rented to blacks in other areas of the city, it had not rented to blacks in Orchard Park where it controlled the rental of at least 20 homes. "Mr. Davies chose rather to endorse without question that authority he had placed in Mrs. Clement to rent as she saw fit," the Board Chairman stated.

Having found that discrimination contrary to the Code had occurred, the Board issued the following order:

- the respondents are jointly and severally liable for discriminating against the complainant, Mrs. Reese, in violation of sections 3(1)(a) and 3(1)(b) of the Ontario Human Rights Code, 1980;

- by way of special damages, the respondent shall pay to Mrs. Reese the amount of $200;

- general damages in the amount of $2,500 shall be paid by the respondents to Mrs. Reese;

- pre-judgement interest, dating from the issuance of this complaint shall be paid to Mrs. Reese on the special and general damages awarded.

Bates and Zurich Insurance Company of Canada

The case before the Board concerned Michael Bates, a 20 year-old single man who alleged that he had had no driving accidents and had never received any demerit points, yet was informed by Zurich Insurance Company that he must pay higher rates than those paid by women, married men of his age and single men who were 25 years of age or older.

The Board examined the legal soundness of the insurance industry's rate classification system, which uses such factors as age, sex and marital status to determine car insurance premium rates.

Counsel for both parties agreed that a prima facie case of discrimination had been established—that is, that the premium rate differentiation was based on factors prohibited under the Code. Thus, the only issue that remained to be argued was whether Zurich's rate classification system fell within the provisions of section 21 of the Code. This section allows insurance companies to differentiate on prohibited grounds if the differentiation is "reasonable and bona fide."

In the decision, the Board of Inquiry looked to the case of the Ontario Human Rights Commission et al and the Borough of Etobicoke, a 1982 decision of the Supreme Court of Canada, which dealt with a limited exception to a general prohibition

against discrimination. In this case, it was established that when interpreting and applying the exceptions contained within the Code, recognition should be given to the Code's basic purpose, which, as stated in the preamble, is to recognize the inherent dignity and rights of each individual. Consistent with this view, the Board stated that "Persons in this province, then, should be dealt with and assessed, as far as possible, on an individual basis, without regard to stereotypical group characteristics." Thus, just as employers are required to demonstrate that limitations that discriminate on the basis of group characteristics are reasonably necessary to the safe, efficient and economic performance of the job, so, too, insurers must show that discriminatory rate classification systems are reasonably necessary to ensure the efficient operation of the insurance system.

With regard to what is "reasonably necessary" for efficiency within the industry, the Board held that there must be a factual basis for the use of the classification system; that is, the discriminatory group factors used must be causally connected to the risk undertaken by automobile insurers.

In its application of this standard, the Board held that although Zurich submitted that unmarried people, males and the general category of persons under 25 are, in fact, a higher risk, there was no scientific evidence of a direct causal relationship between the risk and the rate categories used. "The distinction," the Board Chairman noted, "appears to be based on little more than historical accidents." He emphasized that the insurance industry cannot rely on 30 years of tradition to support a discriminatory rate classification system.

The Board noted the general rule that exceptions to the prohibitions against discrimination in human rights legislation should be narrowly construed. In this case, Zurich had to establish that the essence of its business would be undermined if it could no longer rely on discriminatory group characteristics. The Board found that Zurich did not demonstrate that the abandonment of the present categories would undermine the essence of its business. In fact, it was pointed out by counsel for the Commission that there is an alternative to the system, which is presently in use for those drivers over the age of 25 years. For those drivers, the industry relies solely on factors that are causally connected and non-discriminatory, such as driving record, driving experience and vehicle use, to establish the premium rates charged.

The Board therefore concluded that although the insurance industry has acted in good faith (having developed its present system for business and economic reasons), "the current automobile driver classifications of unmarried male drivers under 25 contravene the Code" and that the present rate classifications are not based on "reasonable and bona fide" grounds.

The respondent has appealed the decision to the Divisional Court of the Supreme Court of Ontario.

London Life Insurance Company and the Ontario Human Rights Commission, Skidmore

Prof. Skidmore alleged that an insurance policy sold to her by London Life was discriminatory on the basis of sex. The insurance company then brought an application in the Supreme Court of Ontario for a declaration that its insurance policy did not contravene the rights of the complainant under the Code.

Prof. Skidmore alleged that she had been hospitalized for a medical problem unrelated to her pregnancy. This medical problem occurred 10 weeks prior to the estimated date of delivery. She was not on a pregnancy leave of absence. Her claim for disability benefits was denied by the insurance company because her illness occurred during a period when she was entitled to be on pregnancy leave. She alleged discrimination on the basis of sex, contrary to the Code.

With respect to whether the Court had jurisdiction to hear the case, it was ruled that there is nothing in the Code prohibiting the Court from adjudicating upon relevant issues of law. However, the Court held that "a decision of the Court does not interfere with the jurisdiction of the Commission or in any way preclude the Commission from investigating the complaint."

The Court then addressed the merits of the case and found the provisions of the policy under which Prof. Skidmore was denied disability benefits to be invalid. This is because the policy denied benefits to an employee during the period when the employee could elect to be on leave of absence, but is not, in fact, on leave of absence.

The Court ruled in the favour of the Commission and the complainant.

The application was therefore dismissed, and costs were awarded against London Life.

This decision will have a far reaching effect on women who are denied disability benefits during their pregnancies. If an employer offers sick leave coverage to employees, such coverage must be extended to a pregnant woman, except while she is on pregnancy leave.

The Municipality of Metropolitan Toronto et al and the Ontario Human Rights Commission and Medcalf, Somwaru

Mr. Medcalf and Ms. Somwaru had alleged that they had been denied the right to equal treatment without discrimination with respect to the receipt of social assistance benefits, in contravention of section 1 of the Code.

The Municipality had requested the Commission to refuse to deal with these complaints pursuant to section 33(1)(c) of the Code because the complaints were not within the jurisdiction of the Commission on the following grounds:

- welfare administration is not a "service" as defined in section 1 of the Code;

- the General Welfare Assistance Act empowers the welfare administrator to determine eligibility and the amount of assistance and the welfare administrator is therefore not subject to the Code;

- the findings of the Commission could be contrary to those of the Social Assistance Review Board or Court on appeal, and therefore would undermine the intent of the General Welfare Assistance Act;

- it is beyond the jurisdiction of the Commission to deal with the decision of the Social Assistance Review Board, a statutory tribunal.

The Commission assumed jurisdiction in the matter and notified the Municipality of its intention to proceed with the investigation of the complaints.

The Municipality applied for judicial review of the Commission's decision, and the application was dismissed by the Divisional Court of the Supreme Court of Ontario for the following reasons:

> "In our opinion, the type of welfare assistance under consideration here falls squarely within the phrase, 'with respect to services, goods and facilities' in section 1 of the Human Rights Code, 1981, and the complaint is therefore within the jurisdiction of the respondent Commission. Further, we find no error in this exercise of the Commission's discretion under section 33 of the Code. Indeed, in our view, the complaint is of the type contemplated by the legislation to be entertained by the Commission."

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TABLE 1 – Complaints Received by Region of Intake and Ground: 1985/86

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	**Total**	% of Total Complaints
Eastern	16 (11)	5 (3)	4 (3)	33 (23)	14 (10)	8 (6)	5 (3)	2 (1)	54 (37)	4 (3)	**145** (100)	(11)
Hamilton/Niagara	15 (8)	3 (1)	5 (3)	23 (12)	14 (7)	20 (10)	9 (5)	7 (4)	84 (44)	12 (6)	**192** (100)	(14)
Northern	19 (12)	3 (2)	1 (1)	24 (16)	19 (12)	12 (8)	9 (6)	5 (3)	54 (35)	8 (5)	**154** (100)	(11)
Southwestern	35 (18)	8 (4)	3 (1)	35 (18)	24 (12)	27 (14)	5 (2)	11 (5)	46 (23)	7 (3)	**201** (100)	(15)
Toronto Central	59 (20)	18 (6)	13 (4)	47 (16)	21 (7)	37 (13)	10 (4)	5 (2)	73 (25)	9 (3)	**293** (100)	(22)
Toronto East	41 (21)	2 (1)	8 (5)	33 (17)	18 (9)	16 (8)	2 (1)	2 (1)	62 (32)	8 (5)	**191** (100)	(14)
Toronto West	45 (25)	9 (5)	6 (3)	13 (7)	11 (6)	20 (11)	10 (6)	2 (2)	58 (32)	6 (3)	**180** (100)	(13)
Total	230 (17)	48 (4)	40 (3)	208 (15)	121 (9)	140 (10)	50 (4)	34 (2)	431 (32)	54 (4)	**1356** (100)	(100)

TABLE 2 – (Employment) Complaints Received by Region of Intake and Ground: 1985/86

Eastern	12 (11)	2 (2)	3 (2)	29 (27)	14 (13)	6 (6)	1 (–)	2 (2)	40 (37)	–	**109** (100)	(10)
Hamilton/Niagara	13 (9)	2 (2)	5 (3)	22 (15)	14 (9)	20 (13)	1 (–)	4 (3)	70 (46)	–	**151** (100)	(14)
Northern	9 (7)	2 (2)	1 (1)	17 (15)	19 (16)	12 (10)	6 (3)	1 (1)	53 (45)	–	**120** (100)	(11)
Southwestern	24 (17)	5 (3)	2 (1)	28 (19)	24 (17)	21 (14)	2 (1)	1 (1)	37 (26)	2 (1)	**146** (100)	(14)
Toronto **	123 (22)	20 (4)	17 (3)	84 (15)	51 (9)	65 (12)	12 (2)	6 (1)	171 (31)	4 (1)	**553** (100)	(51)
Total	181 (17)	31 (3)	28 (3)	180 (17)	122 (11)	124 (11)	22 (2)	14 (1)	371 (34)	6 (1)	**1079** (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement, and No ground (Sec.33).

** Total for the three Metro Toronto Regions.

TABLE 3 - Complaints Received by Region of Intake and Ground: 1984/85

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	**Total**	% of Total Complaints
Eastern	17 (13)	2 (2)	2 (2)	32 (25)	6 (5)	15 (12)	4 (3)	3 (2)	42 (33)	4 (3)	**127** (100)	(8)
Northern	14 (9)	3 (2)	4 (3)	33 (21)	14 (9)	14 (9)	10 (6)	4 (3)	56 (36)	3 (2)	**155** (100)	(10)
Southwestern	78 (19)	11 (3)	12 (3)	64 (16)	43 (11)	43 (11)	20 (5)	11 (3)	95 (23)	21 (6)	**398** (100)	(25)
Toronto Central	77 (24)	17 (5)	21 (7)	41 (13)	15 (5)	30 (10)	13 (4)	7 (2)	89 (28)	5 (2)	**315** (100)	(20)
Toronto East	66 (19)	19 (6)	11 (3)	53 (15)	27 (8)	31 (9)	20 (6)	8 (2)	92 (27)	14 (5)	**341** (100)	(21)
Toronto West	76 (29)	5 (2)	16 (6)	34 (13)	25 (10)	19 (7)	11 (4)	6 (2)	64 (24)	7 (3)	**263** (100)	(16)
Total	328 (21)	57 (4)	66 (4)	257 (16)	130 (8)	152 (10)	78 (5)	39 (2)	438 (27)	54 (3)	**1599** (100)	(100)

TABLE 4 - (Employment) Complaints Received by Region of Intake and Ground: 1984/85

Eastern	8 (9)	1 (1)	1 (1)	28 (32)	6 (7)	14 (16)	3 (3)	—	27 (31)	—	**88** (100)	(7)
Northern	5 (4)	2 (2)	4 (3)	29 (24)	10 (8)	12 (10)	7 (6)	1 (1)	51 (42)	—	**121** (100)	(10)
Southwestern	58 (18)	6 (2)	10 (3)	55 (17)	42 (13)	34 (10)	17 (5)	6 (2)	99 (30)	—	**327** (100)	(26)
Toronto **	178 (25)	31 (4)	42 (6)	110 (15)	67 (9)	65 (9)	21 (3)	11 (2)	191 (27)	3 (-)	**719** (100)	(57)
Total	249 (20)	40 (3)	57 (5)	222 (18)	125 (10)	125 (10)	48 (4)	18 (1)	368 (29)	3 (-)	**1255** (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement.

** Total for the three Metro Toronto regions.

TABLES ON CASES RECEIVED

Tables 1 to 9 provide information on the number and type of complaints received, indicating the nature of Code usage by the protected groups across the province.

TABLES 1 and 3 - Complaints received by Region of Intake and Ground: 1985/86 (1984/85)

These tables provide a breakdown of complaints received according to geographical regions. The Commission is divided into seven regions for administrative purposes, as indicated on the map on page 34.

In 1985/86, Toronto Central, the region situated in downtown Toronto, received 293 complaints, or 22 per cent of the total complaints registered, followed by the Southwestern region with 201 or 15 per cent, Hamilton/Niagara and Toronto East with 192 and 191 or 14 per cent each, Toronto West with 180 or 13 per cent, Northern with 154 or 11.3 per cent and Eastern with 145 or 10.7 per cent.

In 1985/86 the cases received by the four regions outside Metro Toronto represented 51 per cent of the total while those received by the Metro Toronto regions represented 49 per cent. These percentages reflect a significant change from 1984/85, when the Toronto regions received 57 per cent of the total cases compared to 43 per cent received by the other regions.

This shift results from a 28 per cent decrease in the number of complaints filed in Metro Toronto, where 664 complaints were received in 1985/86 as compared with 919 in 1984/85. At the same time, there was a slight increase in the complaints registered in the regions outside Metro Toronto where 692 complaints were received in 1985/86 compared with 680 in 1984/85.

Handicap was the ground most frequently cited in complaints and this occurred in every region across the province. Handicap was followed by race in the Toronto regions and by sex in the other regions. Age and sexual harassment were the next most cited grounds and were used somewhat comparably in all regions.

TABLES 2 and 4 - (Employment) Complaints received by Region of Intake and Ground: 1985/86 (1984/85)

These tables show the number of complaints received in the area of employment only, after complaints in the areas of services, housing, contracts, vocational associations, reprisal and breach of settlement were deducted from Table 1.

In 1985/86 the Toronto regions received 51 per cent of the total employment complaints, in contrast with only 49 per cent of the total complaints in all social areas, as shown in Table 1. This means that the regions outside Toronto received more complaints in the areas of services, housing and contracts than the Toronto regions. In fact, when Table 2 is subtracted from Table 1, it is shown that they registered 166 or 60 per cent of the total 277 complaints in the non-employment areas, compared with 111 or 40 per cent registered in Toronto.

TABLE 5 – Complaints Received by Ground and Provision, 1985/86

Code Provisions: (Ground:)	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	**Total**	Percentage
Services	20	15	8	21	–	2	10	2	49	1	–	–	8	**136**	10
Accommodation	25	2	3	2	–	9	18	18	10	20	–	–	–	**107**	8
Contracts	4	–	1	1	–	3	–	–	1	–	–	–	–	**10**	1
Employment	181	31	28	182	121	124	22	14	371	–	3	–	3	**1,080**	80
Vocational Associations	–	–	–	1	–	2	–	–	–	–	–	–	–	**3**	–
Reprisal	–	–	–	1	–	–	–	–	–	–	–	17	–	**18**	1
Breach of Settlement	–	–	–	–	–	–	–	–	–	–	–	2	–	**2**	–
Total	**230**	**48**	**40**	**208**	**121**	**140**	**50**	**34**	**431**	**21**	**3**	**19**	**11**	1,356	100
Percentage	17	4	3	15	9	10	4	2	32	2	–	1	1	100	
Extension of Code Provisions Also Cited in Complaints:															
Constructive Discrimination	1	1	1	10	–	–	–	–	3	–	–	–	–	**16**	26
Association Discrimination	9	–	1	1	–	1	4	–	5	1	–	–	–	**22**	36
Announced Discrimination	–	–	–	1	–	–	–	–	–	–	–	–	–	**1**	2
Advertising	–	–	–	1	–	1	–	–	–	–	–	–	–	**2**	3
Application Forms	1	–	–	4	–	5	2	1	4	–	–	–	–	**17**	28
Employment Agencies	–	–	–	1	–	–	–	–	2	–	–	–	–	**3**	5
Employment Plans	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total	11	1	2	18	–	7	6	1	14	1	–	–	–	**61**	100

TABLE 6 – Complaints Received by Ground and Provision, 1984/85

Code Provisions: (Ground:)	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	**Total**	Percentage
Services	35	10	7	23	–	10	8	1	50			–	**144**	9
Accommodation	36	7	1	7	5	17	22	19	15	34		–	**163**	10
Contracts	4	–	1	2	–	–	–	1	2			–	**10**	1
Employment	249	40	57	222	125	125	48	18	368		3	–	**1,255**	78
Vocational Associations	4	–	–	3	–	–	–	–	3			–	**10**	1
Reprisal	–	–	–	–	–	–	–	–	–			16	**16**	1
Breach of Settlement	–	–	–	–	–	–	–	–	–			1	**1**	–
Total	**328**	**57**	**66**	**257**	**130**	**152**	**78**	**39**	**438**	**34**	**3**	**17**	**1,599**	100
Percentage	21	4	4	16	8	10	5	2	27	2	–	1	100	
Extension of Code Provisions Also Cited in Complaints:														
Constructive Discrimination	5	5	15	28	–	5	–	2	9	1	–	–	**70**	43
Association Discrimination	11	1	–	4	1	1	2	4	4	1	–	1	**30**	18
Announced Discrimination	–	–	–	–	–	–	–	–	1	1	–	–	**2**	1
Advertising	–	3	2	6	–	2	1	1	2	–	–	–	**17**	10
Application Forms	–	–	2	7	–	14	15	–	5	–	–	–	**43**	26
Employment Agencies	1	1	–	2	–	–	–	–	–	–	–	–	**4**	2
Employment Plans	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total	**17**	**10**	**19**	**47**	**1**	**22**	**18**	**7**	**21**	**3**	–	**1**	**166**	100

TABLES 5 and 6 - Complaints Received by Ground and Provision, 1985/86 (1984/85)

A total of 1,356 complaints were received in 1985/86, a decrease of 15 per cent from the total 1,599 registered in 1984/85. As seen in Table 1, this decrease was registered in the Toronto regions only, not in the other geographic areas of the province.

The decrease results mainly from a lower number of complaints on the grounds of race and sex but is compounded by smaller decreases in other grounds.

Complaints on the ground of handicap constituted the largest number of cases or 32 per cent of the total complaints received in 1985/86.

Complaints on the ground of race constituted the next largest percentage, with 17 per cent of the 1985/86 total, followed by sex (15%), age (10%) and sexual harassment (9%).

Employment-related complaints represented the bulk of the caseload, reaching 80 per cent of the 1985/86 total, an increase of 2 per cent over 1984/85. Complaints in the areas of services and accommodation constituted 10 and 8 per cent of the total respectively, with the remaining 2 per cent divided among the other social areas.

TABLE 7 - Complaints Received by Type of Handicap and Provision, 1985/86 (1984/85)

Handicap: \ Provision:	1985/86							1984/85						
	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	Percentage	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	Percentage
Sensory (vision/hearing/speech/etc. impairments)	12	1	-	32	-	**45**	10	10	3	-	41	1	**55**	13
Respiratory (asthma/lung diseases/etc.)	-	-	-	15	-	**15**	3	-	-	-	10	-	**10**	2
Limbs and Digits (amputation/impairment of limb/digit/etc.)	3	1	-	57	-	**61**	15	-	3	-	47	-	**50**	11
Cardiovascular (heart disease/hypertension/stroke/etc.)	2	1	-	10	-	**13**	3	-	1	-	18	-	**19**	4
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	14	2	-	10	-	**26**	6	7	3	1	11	-	**22**	5
Neurological (epilepsy/seizures/brain injury/etc.)	5	1	-	18	-	**24**	6	5	-	-	28	1	**34**	8
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hernia/etc.)	7	2	1	140	-	**150**	35	12	-	-	124	-	**136**	31
Miscellaneous (multiple handicaps/obesity/etc.)	2	-	-	31	-	**33**	8	2	-	-	57	1	**60**	14
Learning Disability (dyslexia/etc.)	1	-	-	-	-	**1**	-	-	-	-	2	-	**2**	1
Mental Retardation (or mental impairment)	1	-	-	1	-	**2**	-	8	3	1	3	-	**15**	3
Mental Disorder (pyschiatric illness/ personality disorders/addictions/etc.)	2	2	-	36	-	**40**	9	6	2	-	27	-	**35**	8
Record of claim under the Worker's Compensation Act	-	-	-	21	-	**21**	5	-	-	-	-	-	-	-
Total	**49**	**10**	**1**	**371**	-	**431**	100	**50**	**15**	**2**	**368**	**3**	**438**	100
Percentage	12	2	-	86	-	100		11	3	1	84	1	100	

TABLE 7 - **Complaints Received by Type of Handicap and Provision, 1985/86 (1984/85)**

Physical or mental handicap was cited in 431 complaints, constituting 32 per cent of the total complaints received in 1985/86, by far the most frequently alleged ground of discrimination.

There was practically no change in the number of cases received in 1985/86 compared to those received in 1984/85.

In 1985/86, the number of complaints related to general diseases or disorders continued to increase, to reach 35 per cent of the total number of cases, followed by cases related to impairment of limbs and digits which represented 15 per cent, and sensory impairments which represented 10 per cent.

Workers experiencing injuries or disabilities for which benefits were claimed or received under the Workers' Compensation Act are now guaranteed the right to equal treatment under the Code and 21 complainants made use of this new provision during 1985/86.

TABLE 8 - Complaints Received by Sex of Complainant and Ground

Males			Females	
1984/85	1985/86		1985/86	1984/85
221	146	Race/Colour	83	102
32	33	Ethnic Origin	14	25
47	25	Creed	15	18
50	56	Sex	148	200
5	4	Sexual Harassment	116	125
82	93	Age	45	69
24	20	Marital Status	27	51
10	9	Family Status	25	29
269	255	Handicap	175	164
9	6	Public Assistance	15	25
3	3	Record of Offences	-	-
7	14	Reprisal	3	9
-	2	Breach of Settlement	-	1
-	7	No Grounds	4	-
759	673	Totals *	670	818
48%	50%		50%	52%

* The difference between the totals on this table and on Tables 1 and 5 represents the complaints initiated by the Commission this year.

TABLE 8

In 1985/86, consistent with the trend observed in previous years, females outnumbered males in alleging discrimination because of sex, sexual harassment, marital and family status, while males outnumbered females in filing complaints in the other protected grounds such as race, ethnic origin, creed, age and handicap.

The ground of "sex" includes complaints dealing with discrimination because of pregnancy which totalled 30 in 1985/86.

TABLE 9 - Commission-Initiated Complaints by Ground, 1985/86 (1984/85)

	1985/86	1984/85
Race/Colour	1	6
Ethnic Origin	1	-
Creed	-	1
Sex	4	7
Sexual Harassment	1	-
Age	2	1
Marital Status	3	2
Handicap	1	5
Total	13	22

TABLE 9

Where the Commission is made aware of apparent violations of the Code not necessarily related to individual victims, the Code provides for the initiation of complaints under which the situation can be fully investigated.

The following examples illustrate the types of complaints initiated by the Commission in 1985/86.

- Allegations against an employer suspected of denying promotion to employees of Philippine ancestry. Indication of these practices was revealed during the investigation of a separate, individual complaint.

- Allegations that a personnel agency screens out job applicants who speak with a "foreign" accent and generally discriminates against racial minority applicants.

- Complaint against an employer whose application form includes questions that are in violation of the Code.

- Allegations against an employer's practice of recruiting externally for Management Trainees, which leads to almost exclusive hiring of males, instead of relying on promotion from within, which would open promotional opportunities to a greater number of females who constitute the bulk of the workforce.

- Allegations against an insurance company that denies medical coverage to common-law spouses who have lived together less than 24 months. This standard was not applied adversely to legally married spouses.

- Allegations against an employer and union that are parties to a collective agreement which denies female employees sickness benefits for pregnancy-related illnesses.

- Allegations against a shoe store that uses females as cashiers and males as salesclerks exclusively.

TABLE 10 - Complaints Closed by Disposition and Ground, 1985/86

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	No Grounds (Sec. 33)	**Total**
Settled	128 55%	18 43%	20 57%	139 73%	77 74%	62 53%	34 83%	23 85%	197 65%	14 93%	3 75%	9 56%	-	-	**724** 64%
Dismissed	65 28%	20 48%	13 37%	19 10%	14 13%	34 29%	-	-	47 16%	1 7%	-	3 19%	1 100%	3 100%	**220** 20%
Withdrawn	38 17%	4 9%	2 6%	32 17%	13 13%	22 18%	7 17%	4 15%	58 19%	-	1 25%	4 25%	-	-	**185** 16%
Total	**231**	**42**	**35**	**190**	**104**	**118**	**41**	**27**	**302**	**15**	**4**	**16**	**1**	**3**	**1,129**

TABLE 11 - Complaints Closed by Disposition and Ground, 1984/85

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	**Total**
Settled	137	30	21	149	77	78	40	29	193	22	2	10	-	**788**
	64%	60%	62%	84%	81%	74%	85%	82%	70%	100%	100%	83%	-	74%
Dismissed	50	8	9	13	8	20	3	3	37	-	-	2	1	**154**
	23%	16%	26%	7%	8%	19%	7%	9%	14%	-	-	17%	100%	14%
Withdrawn	27	12	4	16	10	8	4	3	44	-	-	-	-	**128**
	13%	24%	12%	9%	11%	7%	18%	9%	16%	-	-	-	-	12%
Total	**214**	**50**	**34**	**178**	**95**	**106**	**47**	**35**	**274**	**22**	**2**	**12**	**1**	**1,070**

TABLES ON COMPLAINTS CLOSED

Tables 10 to 19 provide information on the numbers and types of case dispositions and settlements.

TABLES 10 and 11 - Complaints Closed by Disposition and Ground,1985/86 (1984/85)

Complaints closed during 1985/86 totalled 1,129, representing an increase of six per cent over the number of 1,070 closed in 1984/85.

The Commission may close a case under the following circumstances.

Withdrawal - by accepting a complainant's instructions to stop proceedings on the matter.

Settlement - by ratifying agreements arrived at by the parties following investigation or reconsideration of a complaint or by means of decisions and awards by Boards of Inquiry or the Courts.

Dismissal - by deciding not to deal with a complaint, in accordance with section 33 of the Code; by determining that the evidence does not warrant an inquiry, in accordance with section 35 of the Code; by upholding its original decision, after the complainant requested reconsideration of the dismissal and the entire matter was reviewed in accordance with section 36; or by means of decisions by Boards of Inquiry or the Courts.

Sixty-four per cent of the cases closed in 1985/86 were settled, while 20 per cent were dismissed and 16 per cent were withdrawn. This represents a change from the equivalent rates in 1984/85 which were, respectively, 74, 14 and 12 per cent. The 64 per cent rate of settlements in 1985/86 represents a decrease of 10 per cent over the rate of 74 per cent in 1984/85 and this decrease was experienced similarly in almost all grounds.

The rate of settlement varies according to grounds. In 1985/86, the highest rates of settlement were registered in cases citing the grounds of public assistance, family status, marital status, record of offences, sexual harassment and sex, while the lowest were observed in complaints related to ethnic origin, age, race and colour, reprisal and creed.

Reconsiderations

In accordance with Section 36 of the Code, when the Commission dismisses a case, the parties are given reasons in writing for the Commission's decision and invited to submit any new evidence or arguments which might affect the Commission's original decision. During 1985/86 57 requests for reconsideration were received, compared with 65 during 1984/85. Forty-nine such requests were completed in 1985/86, compared with 51 in 1984/85.

Decisions not to deal with complaints

In 1985/86,sixty-one requests under section 33 of the Code were submitted by the Commission, requesting that the complaints not be dealt with because: they should be more appropriately handled under another Act; they were trivial, frivolous or made in bad faith; they were outside of the Commission's jurisdiction; or they were based on facts which had occurred more than six months before the complaint was filed.

Of these 61 requests, 35 were accepted (and the case discontinued) and 26 rejected (and the case continued). This represents an increase of 133 per cent over the 15 requests accepted in 1984/85 and a decrease of 41 per cent over the 44 rejected in 1984/85.

Caseload in Process

The number of cases brought forward from 1984/85 was 1,507. During 1985/86, 1,356 new cases were received and 1,129 were closed, bringing the caseload in process at the end of the fiscal year to 1,734.

TABLE 12 - Settlements Effected by Ground, 1985/86

Ground: / Settlement:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$164,936	41	23	11	7	9	37	12	20	56
Ethnic Origin	2,200	3	4	3	-	1	3	-	7	7
Creed	12,085	5	5	-	-	2	7	3	4	4
Sex	132,295	63	32	16	1	15	44	19	13	42
Sexual Harassment	105,245	59	3	2	1	5	26	12	20	48
Age	144,325	23	15	6	-	2	20	7	5	27
Marital Status	6,971	5	6	2	-	-	15	1	-	11
Family Status	4,814	6	7	4	-	-	5	2	3	11
Handicap	457,996	88	57	24	-	6	33	23	21	49
Receipt of Public Assistance	414	2	3	5	-	-	2	-	3	4
Record of Offences	-	-	-	1	-	-	-	1	-	1
Reprisal	19,000	4	1	-	-	1	1	4	1	2
Total	$1,050,281	299	156	74	9	41	193	84	97	262

TABLE 13 – Settlements Effected by Ground, 1984/85

Ground:	Settlement: Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$105,727	46	42	20	1	9	26	24	24	49
Ethnic Origin	14,109	12	6	7	-	2	7	-	1	9
Creed	18,594	7	5	-	-	1	7	3	3	7
Sex	127,052	68	29	19	4	13	54	17	20	75
Sexual Harassment	100,627	52	8	3	1	4	9	22	19	37
Age	34,824	16	24	18	1	9	20	4	4	31
Marital Status	4,144	5	10	8	-	1	10	1	1	7
Family Status	5,750	8	5	9	-	2	7	4	3	13
Handicap	99,174	53	60	33	-	5	30	23	22	61
Receipt of Public Assistance	500	1	8	7	-	-	5	-	1	8
Record of Offences	140	1	-	1	-	-	-	-	-	1
Reprisal	82,447	3	1	-	-	-	-	2	1	1
Total	$593,088	272	198	125	7	46	175	100	99	299

TABLES 12 and 13 - Settlements effected by Ground, 1985/86 (1984/85)

Case settlements under the Code aim at restoring the complainant to the position he/she would have been in but for the discrimination in question.

At the same time, where appropriate, settlements incorporate measures to prevent the re-occurrence of discrimination or to accelerate the process towards balanced representation of protected groups. Among examples of such settlements are review of the respondent's practices and policies (193 in 1985/96, a slight increase from the previous year), human rights seminars with the respondent's employees (41 in 1985/86, or slightly fewer than in 1984/85) and implementation of affirmative action programs (9 such programs in 1985/86, an increase of 2 over 1984/85).

Monetary compensation received by complainants in 1985/86 reached $1,050,281, representing a 77 per cent increase over the $593,088 received by complainants in 1984/85, and the highest amount of cash settlements registered in the Commission's history.

Complaints on the ground of handicap registered the highest amount of compensation of all grounds. A total of $457,996 was received by 88 complainants, representing 29 per cent of all complaints based on handicap closed during the year. Furthermore, 57 complainants alleging discrimination because of handicap were also placed or re-instated into jobs of their choice, and 24 others were offered the next available or consideration for the next available job. These figures reflect the pervasiveness of discrimination facing persons with handicaps.

Complainants alleging discrimination because of race and colour received the next highest amount of compensation, at $164,936, followed by complainants alleging age discrimination, at $144,325, and complainants alleging discrimination because of sex, at $132,295.

Table 18 shows the consistent growth in cash settlements effected by the Commission over the eight-year period 1978/79 to 1985/86.

Table 14 - Complaints Closed by Disposition, Ground and Provision, 1985/86

Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement	**Total**	Percentage
	Ground:													
	EMPLOYMENT													
Settled	94	10	13	119	77	55	22	8	175	–	3	–	**576**	64
Dismissed	49	15	8	15	14	26	–	–	33	–	–	–	**160**	18
Withdrawn	33	3	2	31	13	20	4	2	50	–	1	–	**159**	18
Sub-Total	176	28	23	165	104	101	26	10	258	–	4	–	**895**	100
	ACCOMMODATION													
Settled	19	3	2	2	–	5	9	12	4	13	–	–	**69**	79
Dismissed	4	–	1	–	–	3	–	–	1	1	–	–	**10**	12
Withdrawn	2	–	–	–	–	2	–	2	2	–	–	–	**8**	9
Sub-Total	25	3	3	2	–	10	9	14	7	14	–	–	**87**	100
	SERVICES													
Settled	15	5	5	15	–	2	3	3	18	1	–	–	**67**	54
Dismissed	11	5	3	4	–	4	–	–	13	–	–	–	**40**	36
Withdrawn	2	1	–	1	–	–	3	–	5	–	–	–	**12**	10
Sub-Total	28	11	8	20	–	6	6	3	36	1	–	–	**119**	100
	CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT													
Settled	–	–	–	3	–	–	–	–	–	–	–	9	**12**	52
Dismissed	1	–	1	–	–	1	–	–	–	–	–	7	**10**	24
Withdrawn	1	–	–	–	–	–	–	–	1	–	–	4	**6**	24
Sub-Total	2	–	1	3	–	1	–	–	1	–	–	20	**28**	100

TABLE 14 - Complaints Closed by Disposition, Ground and Provision, 1985/86

This table correlates the disposition of complaints to the social area and ground cited. The Code provisions, or sections in Part I, related to the social areas covered by the legislation such as employment, accommodation, services, etc.

Correlations by disposition and area show that cases in the area of accommodation (cases dealing with all aspects of purchase or rental of private and commercial units) continued to have the highest rate of settlements, at 79 per cent. This was followed by cases in the area of employment at 64 per cent, cases in the area of services at 54 per cent and cases in all the other social areas combined, at 52 per cent.

Cases dealing with the provision of services, goods and facilities such as those available in restaurants, stores, schools, hospitals, government departments, etc. registered the highest rate of dismissals, at 36 per cent, followed by contracts/vocational associations/reprisal and breach of settlement combined, at 24 per cent, employment at 18 per cent and accommodation at 12 per cent.

Correlations by disposition and ground by each area show trends similar to those discussed under Tables 10 and 11, combining all social areas.

TABLE 15 - Complaints Closed by Disposition, Sex of Complainant and Ground, 1985/86

Males					Females			
Withdrawn Nos. %	Dismissed Nos. %	Settled Nos. %	Total Nos.		Total Nos.	Settled Nos. %	Dismissed Nos. %	Withdrawn Nos. %
19 (13)	53 (36)	74 (51)	146	Race	84	49 (58)	16 (19)	19 (23)
3 (12)	11 (44)	11 (44)	25	Ethnic Origin	17	7 (41)	9 (53)	1 (6)
1 (4)	11 (48)	11 (48)	23	Creed	12	9 (75)	2 (17)	1 (8)
6 (18)	8 (24)	19 (58)	33	Sex	153	117 (77)	11 (7)	25 (16)
1 (33)	- -	2 (67)	3	Sexual Harassment	101	75 (74)	14 (14)	12 (12)
12 (18)	24 (36)	30 (46)	66	Age	52	32 (62)	10 (19)	10 (19)
3 (21)	- -	11 (79)	14	Marital Status	24	20 (83)	- -	4 (17)
2 (20)	- -	8 (80)	10	Family Status	17	15 (88)	- -	2 (12)
35 (19)	35 (19)	111 (62)	181	Handicap	119	84 (70)	12 (10)	23 (20)
- -	1 (20)	4 (80)	5	Public Assistance	10	10 (100)	- -	- -
1 (25)	- -	3 (75)	4	Record of Offences	-	- -	- -	- -
1 (10)	4 (40)	5 (50)	10	Other*	10	4 (40)	3 (30)	3 (30)
84 -	**147** -	**289** -	**520**	**Total** **	**599**	**422** -	**77** -	**100** -
16% -	28% -	56% -	100%	Percentage	100%	70% -	13% -	17% -

* Reprisal/Breach of Settlement/No Ground (Section 33).
** The difference between the totals on this table and on Table 9 represents the Commission-initiated complaints closed this year.

TABLE 15

Complaints filed by females continued to register a higher settlement rate than those filed by males in practically all grounds. In 1985/86 these rates were 70 per cent for females and 56 per cent for males, compared with 80 and 65 per cent in 1984/85.

TABLE 16 - (Employment) Complaints Closed by Disposition, Stage of Employment and Ground, 1985/86

Type of Disposition: / Ground:	RACE/COLOUR														
	Black	East Indian	Asian	Native Indian	White	RACE - TOTAL	ETHNIC ORIGIN	CREED	SEX	AGE	HANDICAP	OTHERS *	**TOTAL**	PERCENTAGE	PERCENTAGE
RECRUITMENT AND HIRING															
Settled	15	1	1	2	2	21	3	3	34	25	30	13	**129**	68	
Dismissed	4	8	-	-	-	12	2	2	4	4	8	-	**32**	17	
Withdrawn	3	-	1	-	-	4	-	1	6	3	12	4	**30**	15	
Sub-Total	**22**	**9**	**2**	**2**	**2**	**37**	**5**	**6**	**44**	**32**	**50**	**17**	**191**	100	24
Percentage	-	-	-	-	-	21	18	26	27	32	19	42			
TERMINATION															
Settled	28	8	7	1	1	45	4	7	48	24	128	10	**266**	60	
Dismissed	16	8	1	2	-	27	12	3	8	19	21	2	**92**	21	
Withdrawn	12	1	3	2	-	18	1	1	20	13	29	1	**83**	19	
Sub-Total	**56**	**17**	**11**	**5**	**1**	**90**	**17**	**11**	**76**	**56**	**178**	**13**	**441**	100	56
Percentage	-	-	-	-	-	51	61	48	46	55	69	33			
DURING EMPLOYMENT															
Settled	19	8	-	1	1	29	3	3	37	6	17	7	**102**	64	
Dismissed	8	-	1	-	-	9	1	3	3	3	4	-	**23**	14	
Withdrawn	8	2	-	1	-	11	2	-	5	4	9	3	**34**	22	
Sub-Total	**35**	**10**	**1**	**2**	**1**	**49**	**6**	**6**	**45**	**13**	**30**	**10**	**159**	-	20
Percentage	-	-	-	-	-	28	21	26	27	13	12	25	**100**		
Total	**113**	**36**	**14**	**9**	**4**	**176**	**28**	**23**	**165**	**101**	**258**	**40**	**791**	**	100
Percentage	-	-	-	-	-	100	100	100	100	100	100	100			

* Marital status; family status; record of offences.

** The difference between the totals on this table and on table 15 represents the complaints of sexual harassment which are not included here.

TABLE 16 (Employment) Complaints Closed by Disposition, Stage of Employment and Ground, 1984/85

This table analyses employment cases filed under Section 4 of the Code by the stage at which discrimination was alleged to have occurred, correlating the disposition of the case with the stage of employment, by ground.

In 1985/86 there were 791 employment cases closed, the majority of which (441 or 56%) involved dismissal or constructive dismissal of employees. One hundred and ninety-one, or 24 per cent of the cases, involved recruitment and hiring, and 159 or 20 per cent involved practices relating to promotions, training and terms and conditions of employment. This ranking of stages applied to practically all grounds.

Cases dealing with recruitment and hiring registered the highest level of settlement, at 68 per cent, followed by cases dealing with problems during employment, at 64 per cent, and by cases dealing with termination, at 60 per cent.

TABLE 1: (Employment) Complaints Closed by Type of Work and Ground, 1985/86

Type of Work:	Ground: Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	Percentage
Professional/ Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	42	3	6	23	8	22	38	4	**144**	16
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	19	2	3	30	20	17	21	3	**115**	13
Clerical Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	23	1	-	34	32	21	38	14	**163**	18
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	18	1	4	4	1	11	14	3	**56**	6
Operatives Punch Press/Lathe/Machine/Crane Operator Welder, etc.)	24	7	1	9	6	5	31	1	**85**	10
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	22	6	4	37	27	12	45	7	**160**	18
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	28	8	5	29	10	13	71	8	**172**	19
Total	**176**	**28**	**23**	**165**	**104**	**101**	**258**	**40**	**895**	**100**

* Marital status, family status, and record of offences

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1985/86

Type of Industry: / Ground:	Race/Colour					RACE/COLOUR - TOTAL	ETHNIC ORIGIN	CREED	SEX	SEXUAL HARASSMENT	AGE	HANDICAP	OTHER *	TOTALS	Percentages
	Black	East Indian	Asian	Native Indian	White										
Natural Resources	1	–	–	3	1	5	–	1	1	2	–	8	–	17	2
Manufacturing															
Metals/Parts/Machinery	12	3	1	–	1	17	2	–	4	2	7	30	3	65	
Food/Tabacco	6	–	–	–	–	6	3	1	67	3	4	4	2	30	
Wood/Furniture/Paper	2	–	–	1	–	3	1	1	4	1	1	16	–	27	
Automotive/Aircraft	5	1	–	–	–	6	6	3	7	4	3	8	2	39	
Electrical	9	3	1	1	–	14	1	–	2	3	2	8	3	33	
Other	9	6	2	1	–	18	1	3	17	5	7	27	8	86	
Sub-total	**43**	**13**	**4**	**3**	**1**	**64**	**14**	**8**	**41**	**18**	**24**	**93**	**18**	**280**	25
Construction	**4**	–	–	–	–	**4**	–	–	**1**	**3**	**4**	**3**	–	**15**	1
Transportation/Communications/Utilities	**3**	**4**	–	**3**	–	**10**	**2**	**2**	**5**	**3**	**3**	**19**	**6**	**50**	4
Trade and Retail	**17**	**3**	**2**	**2**	–	**24**	**5**	**5**	**36**	**25**	**18**	**31**	**11**	**155**	14
Finance, Insurance, Real Estate	**21**	**5**	**2**	**4**	–	**32**	**4**	**4**	**17**	**7**	**18**	**22**	**42**	**146**	13
Community/Business/Personal Services															
Schools/Colleges/Univer.	9	2	2	1	–	14	1	3	1	2	13	9	–	43	
Hospitals/Physicians	7	1	1	–	–	10	1	2	10	3	6	22	6	60	
Employment Agencies	1	–	1	1	–	3	1	–	2	1	–	1	–	8	
Hotels/Restaurants	6	2	1	1	–	10	3	–	21	18	8	25	8	93	
Building Services	10	–	–	–	–	10	2	2	7	5	3	12	2	43	
Other	14	6	2	–	4	26	4	7	19	16	7	21	5	105	
Sub-total	**47**	**11**	**7**	**3**	**5**	**73**	**12**	**14**	**60**	**45**	**37**	**90**	**21**	**352**	31
Public Administration	**8**	**8**	**2**	**1**	–	**19**	**5**	**1**	**29**	**1**	**14**	**36**	**9**	**114**	10
Total	**144**	**44**	**17**	**19**	**7**	**231**	**42**	**35**	**190**	**104**	**118**	**302**	**107**	**1129**	100

* Marital Status/Family Status/Record of Offences/Reprisal/Breach of Settlement/No Grounds (S.33)

TABLE 17 - (Employment) Complaints Closed by Type of Work and Ground, 1985/86

"Type of Work" denotes the occupational cagetories of complainants. Complainants in the labour/general category registered the highest number of complaints, followed by those in the services and clerical categories. Complainants in the crafts and foreman/woman category registered the lowest number, followed by those in the operatives category.

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1985/86

In 1985/86, the Community, Business and Personal Services industries experienced the largest percentage of complaints, at 31 per cent of the total cases closed, followed by the Manufacturing industries at 25 per cent, Trade and Retail industries at 14 per cent and Finance, Insurance and Real Estate at 13 per cent. These trends are similar to those observed in 1984/85, when the corresponding percentages were 36, 24, 11 and 17 per cent.

The trend of higher frequency of complaints in the services sector also apply when correlating the grounds of complaints to the type of industry where the complaints occurred. This is so for all grounds except for handicap where the bulk of complaints is evenly divided between the manufacturing and services industries. This trend reflects a change from 1984/85 when all grounds, including handicap, had higher frequencies of complaints in the manufacturing than in the service industries.

With respect to each single type of industry, the largest number of complaints occurred in Hotel/Restaurants, with 93 complaints or eight per cent of the overall total. The second largest number occurred in the industries of manufacturing metal parts with 65 cases (6%), and the third largest in hospitals/physicians, with 60 cases (5%).

TABLE 19 - Boards of Inquiry Appointed and Completed, 1985/86 (1984/85)

	1985/86		1984/85	
Boards Appointed	24	(32) *	41	(56) *
Boards Completed:	15	(22)	17	(20)
Pre-hearing Settlements	6	(8)	7	(20)
Decisions for Complainant	5	(5)	6	(7)
Decisions for Respondent	4	(9)	4	(4)
Board Decisions Under Appeal	9	(10)	7	(10)

* Number of complainants involved

TABLE 19

Appointment of 24 Boards of Inquiry was requested by the Commission in 1985/86, a decrease of 41 per cent over 1984/85.

It should be noted that the 24 appointments comprise a total of 32 separate complaints. This occurs by virtue of section 31(3) of the Code which enables the Commission to combine complaints that "bring into question a practice of infringement engaged in by the same person" or that "have questions of law or fact in common".

Fifteen boards were completed, six of them having been settled by the parties before or during the hearing. Of the nine hearings that came to a conclusion there were six findings of discrimination with awards in favour of the complainants and five findings of no-discrimination.

TABLE 20 - Inquiries, Voluntary Compliance And Public Education, 1985/86 (1984/85)

Compliance Division	1985/86	1984/85
Inquiries	47,049	51,779
Referrals	13,343	14,345
Informal Resolutions	86	134
Application Form Reviews	550	741
Advertising Reviews	187	275
Exemptions	90	89
Public Education Activities	403	618
Publications Distributed	349,500	368,435

TABLE 20

A comparison of these activities over the two-year period indicates decreases in nearly all areas. This is because of a sustained emphasis on the resolution of formal complaints during 1985/86 and to the large case load carried throughout the year.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1985/86 (1984/85)

Sector:	1985/86 Cases: Community Relations Mediations	1985/86 Cases: Community Relations Projects	1985/86 Cases: Public Education Projects	1985/86: Consultations	1985/86: Public Education Activities	1984/85 Cases: Community Relations Mediations	1984/85 Cases: Community Relations Projects	1984/85 Cases: Public Education Projects	1984/85: Consultations	1984/85: Public Education Activities
Neighbourhood Relations	21	4	0	30	15	41	1	0	18	3
Public Services/Facilities	24	0	0	19	8	17	0	1	15	4
Criminal Justice System	11	12	1	37	10	28	3	3	40	8
Educational Institutions	9	26	2	163	159	17	8	9	124	86
The Workplace	13	13	1	61	21	3	8	2	44	18
Unions	0	0	0	20	5	0	2	0	6	0
Media	6	11	0	50	77	14	0	0	15	59
Health/Social Services	1	4	0	38	28	1	2	0	16	4
Community Organizations	24	21	1	360	233	16	12	5	398	203
Religious Institutions	0	2	0	10	3	4	0	0	7	0
Government	21	41	1	130	45	5	9	0	76	28
Community at Large	0	2	0	15	25	2	6	1	42	35
Total	130	136	6 *	933	629	148	51	21	801	448

* As of June 1985 Public Education Projects were incorporated into Community Relations Projects.

TABLE 21 - **Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1985/86 (1984/85)**

Definition of Activities

Mediations:

Mediation between parties in conflict in order to diffuse situations of racial and ethnic tension at the community and institutional levels.

Projects:

Development or implementation of specific programs or policies designed to improve race relations at the community or institutional level.

Consultations:

Provision of information and advice on race relations issues to individuals and organizations as requested.

Public Education Activities:

Organization or participation in activities designed to heighten public awareness of race related issues and/or the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

Public Education Projects:

Design and delivery of race relations training programs to community organizations or institutions in order to heighten awareness of various race related issues.

Comments

There were 933 consultations in 1985/86, an increase of 17 per cent over the total 801 in 1984/85. This resulted from greater emphasis being placed on consulting with institutions and community organizations in order to promote wider community involvement in the area of race relations.

Public education activities in 1985/86 totalled 629, an increase of 40 per cent over the 448 registered in 1984/85. This reflects the growing need to enhance public awareness of race relations issues and of the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

There were 130 community mediations in 1985/86 representing a decrease of 12 per cent against the 148 registered in 1984/85; and 136 community relations projects, representing an increase of 167 per cent over the 51 registered in 1984/85. This shift reflects both the community demands for these projects as well as the Division's more proactive strategy.

ONTARIO HUMAN RIGHTS COMMISSION STAFF*

at March 31, 1986

Office of the Chairman

Jones, Howard
Shaw, Marian
Silberman, Toni

Office of the Executive Director

Brown, George
Jim, Serena

Legal Section

Chow, Mary
Lazor, Yan
* Wacyk, Tanja

Head Office

Armstrong, Jill
Beange, Carolynn
* Brophy, Brian
Della-Nebbia, Nancy
Gaspar, Fern
McGregor, Sharon
Mears, Laurie
Reynolds, Jessica

Conciliation and Compliance Division

Hurley, Helen
Nakamura, Mark
* Reaves, Doreen
Stratton, Jim
Svegzda, Laima

Unit for the Handicapped

Binstock, Rob
Gulamhussein, Zarina
Justason, Barbara
Lawrence, Greg
* Nakatsu, Connie
Ramanujam, Sita
Ruiter, Fred
Singh, Vidya

Eastern Ontario Region

Ackroyd, Lynda
* Hershorn, Barbara
* Kalimootoo, Roxanne
Legault, Therese
Polley, Joe
Richard, Maurice

Hamilton-Niagara Region

* Baratta, Tom
* Firth, Dana
Jostman, Susan
Marino, Len
McSween, Selwyn
* Strojin, Anny
Witter, Merv

Toronto East Region

Caffrey, Colm
Della Vella, Rick
Edwards, Neil
Fiddes, Judy
* Ioi, Rod
Kerna, Gloria
Mankikar, Ann
Morrison, Glen
Mowatt, Ann
* Nipp, Dora
Palacio, Roger
* Seales, Robert

Northern Ontario Region

* Buffington, Margaret
Fratesi, Debra
Lapalme, Gilles
Mitchell, Irene
Roszell, Noella
St. Onge, Jo-Anne
Welch, Dan

Southwestern Ontario Region

Barnes, Dorothy
* Blackwood, Calvin
Burns, Walter
Carrick, Anne
Dahlin, Anita
Harrington, Rick
* Koushik, Aruna
* Schiller, David

Toronto Central Region

* Bacter, Israel
* Bowland, Adelyn
Cargill-Sim, Fiona
Chapman, Shirley
Crean, Fiona
* Hajsaniuk, Drew
Holt, Silvilyn
Johnson, Beverley
Mullings, Paulette
Nebout, Maggie
Obermuller, Diane
Speranzini, Gary
Stern, Doris

Toronto West Region

Arnot, Perry
* Buchok, Paula
* Fenson, Avrum
Fox, Anita
Frank, Diane
Kaczmarski, Joan
MacKenzie, Wes
McKee, Anne
Marcuz, Vic
Mutimer, Connie
* Sibblies, Genine
Skey, Carol Ann

Race Relations Division

Office of the
Race Relations Commissioner:

Charles, Joyce
Ramondt, Susan

Operations Unit:

Bennett, Irene
Bullen, Sharon
Chopra, Raj
Crisostimo, Franca
Da-Silva, Mike
Gill, Surinder
Guttentag, Gail
Ifejika, Sam
Lloyd, Eva
Luther, Rashmi
* Samuel, Mary
Schweitzer-Rozenberg, Ruth
* Ward, Scouter
Whist, Eric
Zaidi, Urooj

Program & Policy Development Unit:

D'Ignazio, Dan
* Paparo-Stein, Irene

* These staff members are on contract or secondment.

COMMISSION OFFICES

Head Office

400 University Avenue
Toronto, Ontario
M7A 1T7
(416) 965-6841

Branch Offices

Hamilton

119 King Street West
L8N 3Z9
(416) 521-7738

Kenora

808 Robertson Street
P9N 1X9
(807) 468-3128

Kingston

1055 Princess Street
K7L 1H3
(613) 547-3414

Kitchener

824 King Street West
N2G 1G1
(519) 744-8101

London

205 Oxford Street East
N6A 5G6
(519) 439-3231

Ottawa

2197 Riverside Drive
K1H 7X3
(613) 523-7530

Sault Ste. Marie

390 Bay Street
P6A 1X2
(705) 949-3331

St. Catharines

205 King Street
L2R 3J5
(416) 682-7261

Sudbury

199 Larch Street
P3E 5P9
(705) 675-4455

Thunder Bay

435 James Street South
P7E 6E3
(807) 475-1693

Timmins

273 Third Avenue
P4N 1E2
(705) 267-6231

Toronto Central

400 University Avenue
Toronto M7A 1T7
(416) 965-6841

Toronto East

2500 Lawrence Avenue East
Scarborough M1P 2R7
(416) 750-3575

Toronto West

2 Robert Speck Parkway
Mississauga L4Z 1H8
(416) 273-7811

Windsor

500 Ouellette Avenue
N9A 1B3
(519) 256-8278

2ØN
72
56

THE ONTARIO HUMAN RIGHTS CODE

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person [illegible] the community and able to contribute fully to the [illegible]ment and well-being of the community and the Province;

[illegible]eas these principles have been confirmed by a number of enactments of the [illegible]nd it is desirable to revise and extend [illegible]ction of human rights in Ontario;

[illegible]r Majesty, by and with the advice and [illegible] Legislative Assembly of the Province [illegible] Ontario, enacts as follows:

Ontario Human Rights Commission

Annual Report 1986 – 1987

25

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

[illegible]ch the SECOND

By the grace of god of the united kingdom, canada and her other realms and territories queen head of the commonwealth, defender of the faith.

All to whom these presents shall come or [illegible] the same may in anywise concern,—

GREETING:

Elizabeth R

[illegible]IZAB[illegible]

PAR LA GRÂCE DE DIEU REINE DU royaume-uni, du CANADA ET DE SES AUTRES ROYAUMES ET TERRI[illegible] chef du commonwealth, défenseur de la f[illegible]

A TOUS CEUX QUE LES PRÉSENTES PEUVENT DE QUELQUE MANIÈRE CONCERNER,

SALUT:

A PROCLAMATION

Attorney General of Canada

PROCLAMATION

WHEREAS

[illegible]n the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

AND WHEREAS it is in accord with the status of Canada as an independent state that Canada should be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to the Constitution;

AND WHEREAS the Parliament of the United Kingdom has therefore, at the request and with the consent of Canada, enacted the Canada Act, which provides for the patriation and amendment of the Constitution of Canada;

AND WHEREAS section 58 of the Constitution Act, 1982, set out in Schedule B to the Canada Act, provides that the Constitution Act, 1982 shall, subject to section 59 thereof, come into force on a day to be fixed by proclamation issued under the Great Seal of Canada;

NOW KNOW YOU that We, by and with the advice of Our Privy Council for Canada, do by this Our Proclamation, declare that the Constitution Act, 1982 shall, subject to section 59 thereof, come into force on the Seventeenth day of April, in the Year of Our Lord One Thousand Nine Hundred and Eighty-two.

OF ALL WHICH Our Loving Subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

At Our City of Ottawa, this Seventeenth day of April in the Year of Our Lord One Thousand Nine Hundred and Eighty-two and in the Thirty first Year of Our Reign.

By Her Majesty's Command,

Registrar General of Canada

Prime Minister of Canada

GOD SAVE THE QUEEN

Le procureur général du Canada

[illegible]

Par ordre

Le registr[illegible]

Le premi[illegible]

United Nations
Universal Declaration of Human Rights

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Everyone has the right to recognition everywhere as a person before the law. All are equal before the

Everyone has the right to freedom of peaceful assembly and association.

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country.

Everyone has the right to work, to free choice of employment, to just and favourable conditions, to equal pay for equal work. Everyone has the right to form and join trade unions.

Everyone is entitled to a social and

ONTARIO HUMAN RIGHTS COMMISSION

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Ontario Human Rights Commission
Commission ontarienne des droits de la personne

Suite M-1-59A
Macdonald Block
Toronto, Ontario
M7A 1A2

Bureau M-1-59A
Édifice Macdonald
Toronto (Ontario)
M7A 1A2

Office of the Chairman
Bureau du président
416/965-2388

June, 1987

The Honourable William Wrye
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Mr. Wrye:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1986/87 for submission to the Legislative Assembly of Ontario.

Sincerely,

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE



As Minister responsible for human rights, I am most grateful for this opportunity to extend greetings through the annual report of the Ontario Human Rights Commission.

This day is an important one in the history of our province, for it marks the 25th anniversary of the enactment of the Human Rights Code.

Human rights are about justice and equity. Justice and equity characterize the community that is Ontario. The Human Rights Code is the public expression of that character.

When the Code was first enacted in 1962, it was the first such statute to be found anywhere in Canada. In the years since, it has undergone two major revisions, the most recent in 1986.

These revisions have reflected the dynamic nature of human rights in Ontario. They have also reflected the community's readiness to adapt its inherent fairness and open-mindedness to contemporary concerns.

The Code and the Commission are vital in our province. But they do not, in and of themselves, constitute the community's recognition of the dignity and worth of every person and its solemn undertaking to provide for equal opportunities and rights without discrimination. That recognition can only be measured by the ways in which each of us who lives and works in Ontario respects and responds to the other, every day.

May we take particular note of that on this day.

William Wrye
Minister

CHAIRMAN'S REMARKS

Respect for human rights is an old tradition in Ontario, but it is a vulnerable and fragile one. In a community as ethnically diverse and multiculturally resplendent as ours, and in economic conditions that encourage self-centredness rather than othermindedness, we must continue to guard against that tradition becoming less cherished, more tarnished.

It is important to remember, however, that ours is a tradition in which we can take pride. Our history is replete with significant reminders of the constructive, if not inspirational, steps taken to forward our goal of equality of opportunity and the protection of human rights for the various groups and individuals that constitute our population.

Ontario was the first jurisdiction in Canada to give formal and public recognition to the moral, social and economic consequences of discrimination by establishing a human rights commission and enacting the Ontario Human Rights Code in June 1962.

The Ontario Human Rights Code is a statute designed to address the problem of discrimination. More importantly, it is a declaration of public policy that emerges from the consensus of the community. Human rights legislation represents the expression of the decent values of the community and provides support by example and by law for better understanding of and respect for these values.

On this, our 25th anniversary, as my second term as Chairman nears an end, I am particularly proud that human rights has advanced so considerably in Ontario over the past few decades, and especially during my nine-year tenure on the Commission.

The Commission has always attempted to be sensitive in responding to the changing needs of our evolving society. Three landmark periods evidence this most vividly. In 1977 the Commission, under the capable leadership of Dr. T.H.B. Symons, conducted the first comprehensive review of the Code since 1962 by travelling throughout the province, receiving deputations and briefs from Ontarians. The resulting report, "Life Together", remains current as a masterly analysis of the philosophical and pragmatic considerations behind human rights law.

Some four years later, on June 15, 1982, 20 years to the day since the enactment of the first Code, the new Human Rights Code was proclaimed, incorporating many of the recommendations of the "Life Together" report. For the first time, people who are physically or mentally handicapped were afforded the full protection of the law, the prohibition against sexual harassment was entrenched, people on public assistance could not be denied accommodation for that reason alone, and those who had received an official pardon for criminal offences were now protected by Ontario's legislation. The Race Relations Division of the Commission was officially created and mandated to inquire into, mediate and resolve community tensions.

These revisions once again ensured that Ontario stood in the forefront of the protection of the rights and dignity of Ontarians.

Six short months ago, in December 1986, the Ontario government further honoured its commitment to social progress by passing Bill 7 - designed to bring Ontario statutes in line with the Canadian Charter of Rights and Freedoms. Among the amendments are a repeal of the sections of the Code that allowed for adult-only buildings and restrictions by sex in athletic activities. Sexual orientation has been

added as a prohibited ground and a woman may not be discriminated against because she is, or may become, pregnant. The rights of handicapped persons have been extended with respect to employment and access to premises.

I am privileged to have been part of such an advancement in the protection of human rights. But these rights must be tempered with the assumption of responsibilities by each of us - to uphold, respect and fight for the dignity and worth of our neighbours.

We all have a crucial contribution to make - to ensure that the effective machinery necessary for the protection of the rights of the individual and the community is in place and functioning. We, who devote ourselves to the preservation of justice and equality, are inextricably involved in the process. We must all confront, head on, the menacing and ugly face of hate and persecution. We must work together to ensure that this deprivation of human dignity becomes part of our memory and not part of our destiny.

On this 25th anniversary we are facing, and will continue to bear witness to, many changes and challenges, which we must all be prepared to meet in order to continue fulfilling our goals of equality of opportunity, quality of life, dignity and respect.

I am fortunate to have had the opportunity to work alongside of a dedicated, committed and most able staff. Their courage, devotion and expertise have been truly nonpareil, and I am honoured to have been associated with them.

I express my personal gratitude to our Minister of Labour, the Honourable William Wrye, for his wisdom, unfailing co-operation and support of our endeavours, and offer my thanks to the former Ministers of Labour, Robert Elgie and Russell Ramsay.

It is with regret that we acknowledge the end of the terms of office of Commissioners Aileen Anderson and Lou Alexopoulos, and wish them well in their future endeavours.

On behalf of my colleagues, I would like to extend a warm welcome to our new Commissioners, Reva Devins and Robert Paris, whose experience, expertise and sensitivity to human rights issues will ensure that the work of the Commission will continue to be of the highest calibre.

In closing, I reach out to you, the people of Ontario, to stand side by side, to affirm our similarities and respect our differences, and to dedicate ourselves on this anniversary to people everywhere who suffer injustice and who still have the will to dream of freedom.

THE COMMISSION



Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, is currently serving his second term as Chairman. Born in Athens, Ontario, Canon Purcell left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as Chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.



Vice-Chairman: R. Lou Ronson

R. Lou Ronson is the recently retired Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce. He was a delegate to the "UNESCO International Workshop on Racism and Discrimination" in 1971 and is a former national Chairman of the League for Human Rights of B'nai Brith.



Race Relations Commissioner: Dan McIntyre

Appointed to the Commission in January 1986, Mr. McIntyre is a graduate in both business administration and social work. Prior to his becoming Director of the Ontario Region of the Canadian Human Rights Commission in 1982, Mr. McIntyre served as Chief of Community Liaison for that Commission. He has been active in the trade union movement and served as President of Local 70176 of the Public Service Alliance of Canada. Earlier in his career, he worked as a human rights officer, social worker and youth services director in New Brunswick.



Commissioner: Louis Alexopoulos

A scholarship recipient and graduate of the Universities of Wilfrid Laurier (B.B.A.), York (M.B.A.) and Western Ontario (LL.B.), Mr. Alexopoulos was appointed in February 1984 and brought to his role as Commissioner expertise in legal and financial areas. He is Director and Treasurer of the Canadian Paparaon Association - St. Nicholaos, was a founding member of the Hellenic-Canadian Federation of Ontario and the Hellenic-Canadian Law Association and is a member of the Hellenic-Canadian Professional and Businessmen's Association. Mr. Alexopoulos's term expired in February 1987.



Commissioner: S. Aileen Anderson

Appointed to the Commission in February 1984, Ms. Anderson is a real estate agent and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was elected by the Board to be its representative on the Metropolitan Toronto School Board. Ms. Anderson was also a member of the Advisory Committee to the Minister of Education on General Legislative Grants, the Metropolitan Toronto Committee on Race Relations and Policing, and has served on the Etobicoke Planning Council since 1968. Ms. Anderson's term expired in February 1987.



Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in the trade union movement, Mr. Bennett also serves on the boards of the United Way, Sault College of Applied Arts and Technology, the Canadian Mental Health Association, Plummer Memorial Hospital, Community Futures, Soogoma Industries and the Plummer Foundation.



Commissioner: Leslie Blake-Côté

Leslie Blake-Cote utilizes her varied background in teaching, print and broadcast journalism, consulting and public relations as a Commissioner and as a feature writer for local and national trade magazines and newspapers. As researcher/host of numerous cable television documentaries, she has dealt with human rights issues. Ms. Blake-Cote is also involved in community and volunteer endeavours.



Commissioner: Reva Devins

Appointed to the Commission in February 1987, Ms. Devins completed her undergraduate degree at York University and holds law degrees from Osgoode Hall and Harvard University. She recently served as law clerk to a Justice of the Supreme Court of Canada.



Commissioner: A.J. Diamond

A renowned architect and planner for over 20 years, Jack Diamond has won many national and international awards in both architecture and urban planning. A graduate of the Universities of Capetown, Pennsylvania and Oxford, and a lecturer/professor at a number of universities in Canada and the United States, Mr. Diamond has, among other endeavours, acted as Chairman of the National Capital Commission Design Advisory Committee.



Commissioner: Catherine L. Frazee

Catherine Frazee, currently the Product Standards Co-ordinator for Esso Petroleum Canada, serves on the Board of the Canadian Paraplegic Association - Ontario Division. She holds membership in People United for Self Help - Ontario and Disabled Women's Network and participates in the Committee on Legal Issues in Psychiatry.



Commissioner: Elizabeth Kishkon

A resident of Windsor, Elizabeth Kishkon was appointed to the Commission in March of 1986. She began a professional career as a political commentator and interview host for the CBC in 1971 while still participating on many boards of various social service agencies. An active participant in community projects and municipal affairs, Ms. Kishkon was a member of Windsor City Council and was ultimately elected as the city's first woman mayor.



Commissioner: Lilian Ma

Appointed to the Commission in March 1986, Lilian Ma is currently a Research Associate, Department of Biochemistry, University of Toronto. Extensively involved in the community, Dr. Ma has held executive and member positions on the Canadian Ethnocultural Council, the Chinese Canadian National Council, the National Organization of Immigrant and Visible Minority Women of Canada and the Council of Chinese Canadians in Ontario. She sits as a member of the Equality Rights Panel as well, which was set up by the Canadian Council on Social Development to administer the federal Court Challenge program.



Commissioner: Robert G. Paris

Newly appointed to the Commission in February 1987, M. Paris is currently Director of the Centre for Legal Translation and Documentation at the University of Ottawa. A graduate of both Laval University and Osgoode Hall, M. Paris was called to the Bar in 1954. He is also a part-time professor in the Faculty of Law, University of Ottawa.



Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was Member of Parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the National Chairman of the Native Housing Task Force and is an honorary life member of five Metis, Indian and non-status Indian associations.

ONTARIO HUMAN RIGHTS COMMISSION

25th Anniversary: 1962-1987

Ontario was the first jurisdiction in Canada to enact a comprehensive human rights code in 1962. The Code consolidated all of the anti-discrimination and fair practices statutes passed in the 1940s and '50s. The Ontario Human Rights Commission was established to seek the public's support for, and to create a public understanding and acceptance of, human rights legislation, forward the principle that every person is free and equal in dignity and rights and develop and conduct educational programs designed to eliminate discriminatory practices. A full-time staff was provided to investigate and conciliate complaints of discrimination and to conduct public education activities. The Commission's first major educational project was its official publication Human Relations, the forerunner of the Commission's present quarterly, Affirmation.

The pioneering Ontario Human Rights Code prohibited discrimination in signs and notices, public accommodation, services and facilities, housing with more than six self-contained dwelling units, employment and trade union membership. The protected grounds were race, creed, colour, nationality, ancestry and place of origin.

The Commission Chairman, the Minister of Labour and the President of the Ontario Association of Real Estate Boards signed a Declaration of Fair Housing Practices in 1966, the first such declaration in North America. This included a policy to accept all property listings without reference to any discriminatory grounds. Later that year, a similar pledge was signed between the Commission and the apartment developers' committee of the Urban Development Institute.

In 1966 the Age Discrimination Act was passed to prohibit age discrimination against people between the ages of 40 and 65 in employment. In 1968 a section was added to protect complainants and witnesses from acts of reprisals. The Women's Equal Employment Act followed in 1970, and the Code was amended in 1972 to consolidate the provisions of these Acts.

The Code was further revised in 1972 to prohibit discrimination on the basis of marital status. Also, that year, a section was added to allow for special employment or voluntary affirmative action programs to address systemic discrimination against minority groups and women. Membership in self-governing professions also came under the Commission's jurisdiction. The housing provisions were amended to include any housing accommodation except where the owner, or his or her family, shares a bathroom or kitchen with tenants. In 1972 protection from discrimination on the grounds of sex and marital status was extended to signs and notices, housing, public accommodation, services and facilities. Furthermore, in 1972 the Commission was given the authority to initiate complaints of discrimination.

In 1975 the Commission was reconstituted and changed from a body of public servants to a public body of private citizens, reporting to the Minister of Labour. The Community, Race and Ethnic Relations Unit was established in 1976 to respond to the increasing tension and conflict between racial and ethnic groups in society. The program's objective was to prevent and reduce community tensions and conflicts through education and mediation.

It was in fiscal year 1975/76 that the Commission conducted the first comprehensive review of the Code since its enactment. The 17 public meetings and more than 300

briefs from organizations, agencies and individuals assisted the Commission in understanding the many human rights issues that emerged in the 1960s and early '70s. Its report, Life Together : A Report on Human Rights In Ontario, contained 97 recommendations for how the Code and Commission could be expanded and strengthened to address the new concerns. Many of the recommendations were either implemented as Commission policies or incorporated into an entirely new Code, which was proclaimed as law in 1982.

Prior to the enactment of the new Code, a number of significant developments occurred. In 1978 the Commission established a special Committee on Race and Ethnic Relations and Public Education, comprised of all Commissioners. This Committee analysed the conditions contributing to community problems affecting inter-group relations and took appropriate actions to prevent and reduce tension and conflicts. One of the Committee's activities, which was spearheaded by Canon Borden Purcell, was to contact various religious institutions across Ontario to promote the 30th anniversary of the United Nation's Universal Declaration of Human Rights and to develop human rights education programs in their localities.

A Race Relations Commissioner for the Ontario Human Rights Commission was appointed in 1979 to give greater emphasis and focus to race relations issues. In the same year, the Race Relations Division was created to resolve racial-disputes in the community and to develop long-term policies and educational programs to prevent racial tension and conflicts.

Also, in 1979, a case review panel was instituted to review all settlements reached between the parties to complaints filed under the Code. The panel, which meets twice a month, may either approve the agreement or send the case back to staff for further investigation or conciliation. Previously, Commissioners only reviewed unresolved cases with a view to requesting the appointment of a board of inquiry or dismissing the complaint. The panel ensures that every complainant receives a remedy that reflects the evidence of discrimination that has been gathered and the nature of the injustice suffered. It also ensures that preventive components are built into settlements of cases.

Affirmation, a quarterly newsletter designed to increase public awareness of human rights as well as to highlight Commission achievements and current concerns, began publication in 1980. In 1981 the Commission launched a public education campaign based on the theme "Together We Are Ontario." The thrust of the campaign was that each of us is unique and that if we all respect one another, we make life rich, fuller and varied for everyone.

In June 1981 the Commission hosted the annual conference of the Canadian Association of Statutory Human Rights Agencies, which was held in Windsor. The theme of the four-day conference was the International Year of the Disabled.

The Commission celebrated its 20th anniversary in 1982. On June 15, 1982 the new Ontario Human Rights Code was proclaimed as law, exactly 20 years to the day since the enactment of the original Code. The extended grounds and broadened mandate of protection once again placed Ontario in the forefront of human rights legislation. The new Code prohibited discrimination with respect to employment, accommodation, contracts, goods, services and facilities, membership in unions, vocational associations, self-governing professions and employment agencies. The prohibited grounds included race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap, receipt of public assistance and record of offences. It was the first legislation in Canada to prohibit, explicitly, harassment on any ground and, in particular, unwelcome sexual advances

and solicitations. The new Code also expressly prohibited practices that are not discriminatory on their face but which have an adverse impact upon a particular protected group. Age protection was expanded to include ages 18 - 65 in employment and 18 and over in all other social areas covered by the Code. The new Code was given primacy over all other legislation. This clause came into effect on June 15, 1984.

The most significant addition to the new Code was the prohibition against discrimination on the ground of handicap, which is defined as any real or perceived physical handicap, mental retardation or impairment, learning disability or a mental disorder. Complaints based on handicap soon came to exceed the number of complaints on any other single ground.

December 10, 1983 marked the 35th anniversary of the United Nations Universal Declaration of Human Rights. The Commission paid tribute by producing 15,000 Human Rights "Scrolls", which were distributed to schools, employers, unions, mayors and community organizations. The Commission participated in the conference of the National Coalition for Human Rights in Ottawa to celebrate December 10. Earlier in the year, Canon Purcell represented Ontario at the United Nations in New York, when Canada's Sixth Periodic Report regarding the International Convention on the Elimination of All Forms of Racial Discrimination was reviewed.

The Commission celebrated Ontario's Bicentennial in 1984. To mark the occasion, the Commission sponsored a play called New Canadian Kid, which was performed before over 5,000 school children during the year. Canon Purcell travelled to the Soviet Union in 1984 with a delegation of prominent Canadians, including the Honourable Robert Nixon. The delegation visited "Refusenik" (Russian Jews who have been denied exit visas) communities in Moscow, Leningrad and Riga.

In 1985 the Commission hosted a major conference entitled "The Merit Principle in Action". It was attended by 145 chief executive officers, vice-presidents and other senior officials of major Ontario-based corporations. Commission activities for the year 1986/87 are included in this annual report.

Legal Highlights

The Commission's 20th Anniversary Annual Report for fiscal year 1981/82 highlighted a number of landmark legal rulings that have shaped the interpretation of the Ontario Human Rights Code. In the past five years, a number of important board of inquiry and court decisions have been rendered, affecting both the interpretation and application of the Code.

The Supreme Court of Canada addressed several key issues with respect to discrimination in employment in Ontario Human Rights Commission, O'Malley (Vincent) and Simpsons-Sears Ltd. The case involved a conflict between a store rule requiring sales clerks to work on Saturdays and Ms. O'Malley's religious observance, which prohibited work on the Sabbath. Ms. O'Malley filed a complaint alleging discrimination in employment, contrary to the Code.

The board of inquiry found that the employer had taken reasonable steps to accommodate Ms. O'Malley's religious beliefs by offering her part-time employment and it dismissed the complaint.

On an appeal to the Divisional Court of the Supreme Court of Ontario, it was held that intent is an essential element of discrimination and that as Simpsons-Sears had

no intent to discriminate, there was no contravention of the Code. This decision was upheld by the Ontario Court of Appeal.

The Supreme Court of Canada overturned this decision, holding that the courts below had erred in finding an intent to discriminate to be a necessary element of proof. The Supreme Court applied the doctrine of constructive or systemic discrimination and held that an employment rule, honestly made for sound economic and business reasons and equally applicable to all of whom it is intended to apply, may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. In this kind of situation, an employer has a duty of reasonable accommodation; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

In another significant decision, the Supreme Court of Canada held, in the case of Ontario Human Rights Commission et al. vs Borough of Etobicoke, that a provision in a collective agreement imposing mandatory retirement at the age of 60 constituted discrimination in employment based on age. The Supreme Court ruled that such discrimination in employment is permissible under the Code if age is a bona fide occupational qualification and requirement for the position. To be valid, such a limitation must be imposed honestly, in good faith and in the sincerely held belief that it is imposed in the interests of the adequate performance of the job. The limitation will be in violation of the Code if it is imposed for ulterior reasons aimed at circumventing the provisions of the Code. The Supreme Court held that the onus to show that the limitation is warranted rests on the employer and can be satisfied only by the presentation of evidence linking the limitation to the specific duties and nature of the job in question.

The Supreme Court also held that the Code expresses the public policy in Ontario and that parties may not contract out of its provisions. This is so even where the contract in question arises out of collective bargaining.

In Cindy Cameron v. Nel-Gor Castle Nursing Home and Marlene Nelson, Ms. Cameron was denied a job as a nurse's aide because of a deformity in her left hand. It was argued that she would be unable to do the lifting required in that position and might pose a risk to the elderly patients in the nursing home.

The board of inquiry applied the decision in Ontario Human Rights Commission et al. v. Borough of Etobicoke and held that an absence of malice is not a defence to an allegation of discrimination under the Code. To rely upon the defence that the individual could not perform the essential duties of the job pursuant to section 16(1)(b) of the Code, the employer must establish, on an objective basis and by a preponderance of evidence, that the individual cannot fulfil the essential duties of the job. It is not sufficient for an employer to form an impression, even one without an improper motive, that the individual cannot perform the essential duties of the job. The board of inquiry found that the nursing home did not have the objective evidence necessary to establish a defence under section 16(1)(b) of the Code and that evidence adduced by and on behalf of Ms. Cameron established that she could lift patients in a safe manner. This decision was affirmed by the Divisional Court of the Ontario Court of Appeal, and the respondent's application for leave to appeal to the Ontario Court of Appeal was denied.

It should be noted that the recent amendments to section 16 of the Code will come into force on a day to be named by proclamation of the Lieutenant-Governor. Among the amendments are the repeal of section 16(1)(a) of the Code and the imposition of a statutory duty of reasonable accommodation without undue hardship.

Important legal principles have also arisen from decisions rendered by boards of inquiry. In Sucha Singh Dhillon v. F.W. Woolworth Company, an employee brought an allegation of racial harassment in the workplace. The board held that the atmosphere of the workplace is a term or condition of employment, much like an employee's rate of pay. The board found that where the atmosphere of the workplace is poisoned by racial slurs, there exists a duty on the employer to take reasonable steps to eradicate this form of discrimination.

An important decision regarding sexual harassment was handed down in the case of Edilma Olarte et al. v. Rafael De Filippis and Commodore Business Machines Ltd. Mr. De Filippis, the foreman, was found to have engaged in acts of sexual harassment against six female employees and was held personally liable for these actions. His employer was also found to be personally liable for the acts of sexual harassment committed by Mr. De Filippis because Mr. De Filippis was part of the "directing mind" of the employer with authority to hire, fire and discipline employees. This concept is known as the organic theory of corporate responsibility.

An appeal of this decision to the Supreme Court of Ontario was rejected. The Court found that the Code is valid provincial legislation and empowers boards of inquiry to award damages. The Court upheld the decision of the board to admit similar fact and hearsay evidence, citing section 15(1) of the Statutory Powers Procedure Act.

The Court also rejected arguments that sections 7 and 11 of the Charter of Rights and Freedoms were violated. The Court held that being found to be in violation of the Code does not fall within section 11(d) of the Charter, which relates to being charged with an offence. Section 7 of the Charter was inapplicable because there was no denial of natural justice.

The first board of inquiry decision to deal with the prohibition contained in section 4(2) of the Code against harassment on the basis of handicap was rendered in March 1987 in the case of Boehm v. National System of Baking, Limited et al. Mr. Boehm's supervisor was found to have made derogatory remarks to him regarding his handicap and had singled him out for disciplinary sanctions because of his handicap. The company was held personally liable on the organic theory of corporate responsibility for the acts of harassment because the supervisor was part of management and thus his acts were the acts of the company itself.

Summaries of other significant board of inquiry decisions handed down in 1986/87 may be found elsewhere in this report.

The equality rights contained in the Charter of Rights and Freedoms came into effect on April 17, 1985. Two decisions have been rendered involving challenges of the Code based on the equality provisions of the Charter.

In one case, the Ontario Court of Appeal ruled that section 19(2) of the Code was inconsistent with section 15(1) of the Charter and resulted in adverse effect discrimination against females. It could not, therefore, not be defended as a reasonable limitation under section 1 of the Charter. Section 19(2) of the Code was repealed in December 1986.

The issue of mandatory retirement was raised in a challenge of section 9(a) of the Code, which defines age to mean "an age that is eighteen years or more or less than sixty-five years." The High Court of Justice of the Supreme Court of Ontario held that section 9(1) of the Code is inconsistent with section 15(1) of the Charter to the extent that it defines "age" to be less than 65 years. The Court ruled, however, that at the present time and in the context of the contractual relations proven, section

9(a) is a reasonable limit demonstrably justified in a free and democratic society under section 1 of the Charter.

While the Commission can be proud of its accomplishments, we cannot rest on our laurels. There is still much discrimination that must be addressed. The Code was amended in December 1986 to bring its provisions in line with the Charter of Rights and Freedoms. The amendments will allow the Commission to deal with discrimination in the following areas: sexual orientation, pregnancy, adult-only residences, age discrimination against 16- and 17-year-old persons in accommodation, sex-discrimination in sports and lack of physical access for people with a handicap. However, no human rights legislation or commission can create a society of equality of opportunity on its own. Such a society must be reinforced by positive attitudes and action on the part of institutions, community organizations and concerned individuals. It is with this view that we look forward with great optimism to our next 25 years.

COMMISSION ACTIVITIES

1986/87

The aim of the Ontario Human Rights Commission is to create, at the community level, a climate of understanding and mutual respect in which all of our people are made to feel free and equal in dignity and rights and that each has a rich contribution to make to the well-being and development of our province. The Commission promotes the public policy of Ontario, which recognizes the worth of every person and ensures that equality of opportunity is provided without discrimination.

The statutory functions of the Commission are to:

- forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

- promote an understanding and acceptance of, and compliance with, the Human Rights Code;

- recommend for consideration special programs designed to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve equal opportunity;

- develop and conduct programs of public information, education and research designed to eliminate discriminatory practices;

- examine and review any statute or regulation and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;

- inquire into incidents of, and conditions leading to, tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;

- initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;

- promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

To accomplish its goals, the Commission engages in a wide variety of activities and meets monthly to discuss and take action with respect to policy issues. It also deliberates on all complaints of discrimination in which the parties have not reached a conciliated settlement. A request is then made to the Minister of Labour to appoint or not appoint a board of inquiry.

A case review panel of three Commissioners reviews all settled cases to ensure that the settlements are satisfactory and that the investigations and conciliations have been conducted properly. This Commission panel also grants or denies requests for exemptions to the Code's provisions, makes decisions as to whether or not to file Commission initiated complaints and reviews and approves special programs.

In an effort to heighten public awareness of rights and responsibilities under the Code, the Commission places a strong emphasis on public education activities. From its daily experience, the Commission has become increasingly aware that there is an ongoing need to educate groups and individuals about the provisions of the Code and to reduce the prejudice and stereotyping that lead to discrimination.

During fiscal year 1986/87, the Chairman, Canon Borden Purcell, was actively involved in approximately 200 events throughout Ontario concerning human rights and public education. This included speaking engagements, conferences, community functions and consultations that took place in Toronto, Kitchener, Barrie, Kingston, Smiths Falls, Brockville and Ottawa. In addition, he was interviewed many times by the print and broadcast media.

The Commission continued to hold consultations with senior officials of major institutions, organizations and corporations, imparting information on the provisions of the Code and assisting in the development of human rights policies and proactive programs. Close contact was maintained with community, business and labour leaders, law enforcement agencies, media, educational and religious institutions, school boards, health and social service agencies, transit commissions and all levels of government. As well, the Commission's staff continued its extensive educational program and conducted seminars, consultations and conferences.

During the monthly meetings of the Commission, a number of individuals and organizational representatives were invited to exchange information and make presentations that enabled the Commission to be kept abreast of current human rights issues and concerns as well as matters of public policy. These discussions assist the Commission in its development of policies and programs. Through this format, mutual goals are recognized, as well as the need for co-operation in achieving them.

Affirmation

Affirmation is the Commission's quarterly publication. It contains feature stories, personal profiles, examples of significant cases and settlements, decisions of Boards of Inquiry, editorials and articles on important human rights topics. Articles are written by staff, Commissioners and members of the public and include a number written in French. Affirmation has a circulation of 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1986 issue featured a major article on the Supreme Court of Canada decision in O'Malley and Simpsons Sears. This decision determined that the effect of a policy or practice, rather than the intent to discriminate, is the determinative

factor in deciding whether or not discrimination occurred. Other articles focused on transportation issues affecting people with a handicap, age discrimination and racial harassment.

September's issue included features on discrimination against Sikhs, racism in the workplace, issues affecting young people from South Asian countries, employment-related medical examinations and the case of Justine Blainey and the Ontario Hockey Association. The Chairman's Corner focused on international human rights issues, including South Africa's apartheid policy.

Affirmation's December issue featured an article on the problem of sexual harassment against waitresses. It also paid tribute to the 38th anniversary of the United Nations Declaration of Human Rights.

National and International Responsibilities

Since Canon Purcell is the current President of the Canadian Association of Statutory Human Rights Agencies (CASHRA) the Ontario Human Rights Commission played host to the 15th Annual CASHRA Conference in 1987. The conference theme was Human Rights : The Challenge Continues, and the event was attended by more than 100 senior officials from human rights commissions across Canada.

The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights were adopted by the United Nations General Assembly on December 16, 1966. Ontario gave its written acceptance of these two Covenants in 1972, prior to Canada's ratification of both in 1976. In ratifying these agreements, Canada recognizes its obligations under the documents and confirms its commitment to the elimination of discrimination and the promotion of equality of opportunity.

A Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. This Committee, which meets at least twice a year, was established to provide and maintain the liaison and consultation necessary for Canada to meet the obligations inherent in signing the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has co-ordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, at which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform with the principles enunciated in the International Covenants and the Canadian Charter of Rights and Freedoms.

During the year the Chairman participated in a number of activities relating to the protection of human rights throughout the world. He is a founding member of the Inter-Faith Council on Soviet Jewry and, in this connection, participated in a number of public events designed to bring more attention to the continuing injustice experienced by Jews in the Soviet Union.

On the steps of the Legislature at Queen's Park in Toronto, Commission officials joined with representatives of all three political parties and religious and community leaders in a ceremony dedicated to the "refusenik" community in the Soviet Union. The event, which took place on International Human Rights Day, was sponsored by the Legislature's Committee for Soviet Jewry and the Canadian Jewish Congress's Committee for Soviet Jewry.

During the year, the Commission passed a resolution and issued a press release condemning the policy of apartheid in South Africa and supporting the governments of Ontario and Canada in their actions against apartheid.

United Nations Declaration of Human Rights - 38th Anniversary

December 10, 1986 marked the 38th anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to human values but also as a commitment to the furtherance of universal social harmony.

In Ottawa the Commission joined in a celebration with the Canadian and Quebec Human Rights Commissions. Stephen Lewis, Canada's ambassador to the United Nations, was the keynote speaker as over 150 representatives of government, institutions and community organizations came together to mark the occasion.

Representatives of the Commission addressed and participated in a gathering of officials representing government, corporations, the educational sector and community leaders in Sarnia on December 10. The event was organized by the Sarnia-Lambton Human Rights Committee.

The Chairman celebrated International Human Rights Day in Bermuda, where he was the keynote speaker at two major events. The Chairman was also featured several times in interviews with the Bermuda media. During the brief visit, he also held consultations with the Bermuda Human Rights Commission and the Minister Responsible for Human Rights.

LEGAL DEVELOPMENTS

1986/87

Introduction

In 1986/87 there was a significant increase in the number of cases decided by both boards of inquiry and the courts. This section includes a summary of some of those decisions that have addressed significant legal issues and principles. Also included are summaries of two cases decided under the Canadian Charter of Rights and Freedoms concerning the constitutional validity of certain provisions of the Code. As well, this section lists the amendments to the Code, which received Royal Assent in 1986 as part of the Equality Rights Statute Law Amendment Act.

The Ontario Human Rights Commission has three permanent counsel. Generally, representation at boards of inquiry and before the courts is provided, in part, by the Commission's counsel and by counsel from the Crown Law Office-Civil, Ministry of the Attorney-General. In addition to providing the Commission and its staff with legal advice and direction, counsel are often requested by community groups and organizations to participate in public educational activities. In the past year, counsel have participated in lectures, presentations and mock hearings for numerous organizations, including the Law Society of Upper Canada, the Canadian Auto Workers, the City of Toronto Centretown Program, the Organization of Counsel for Children's Aid Societies in Ontario and law schools. Counsel have also participated as members of various committees and task forces.

Decisions

The first judicial decision to interpret the Commission's function with respect to the approval of settlements under section 42 of the Code was released in February 1987. Section 42 provides that where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties, and a breach of the settlement is grounds for a complaint. In the case of Consumers' Distributing Company Ltd. and the Ontario Human Rights Commission, Ghiansaroop Persaud et al., the complainant, the Company and the Union had negotiated a written settlement of a grievance that called for Mr. Persaud, the grievor, to withdraw his human rights complaint subject to approval by the Commission.

Shortly after the agreement had been signed by the parties, the complainant requested the Commission not to approve it, alleging that he had signed it under duress. The Commission considered the matter under section 42 of the Code and refused to approve the settlement.

The Company brought an Application for Judicial Review which was heard by the Supreme Court of Ontario (Divisional Court). The company claimed that having regard to section 42 of the Code, the Commission was obliged to approve the agreement or to hold a hearing with a view to ascertaining whether the complainant signed the agreement under duress; and if it found that he did not sign it under duress, to approve it. It was the Company's submission that without proof of duress affecting the complainant's decision to sign the agreement, the Commission was under the same legal duty as a court to apply the common law to enforcement of settlements made between parties.

The Court held that the Commission was under no obligation to approve the settlement. The Court noted that a decision to approve a settlement under section 42 requires the Commission to take into account the promotion of the principles of the Code. These principles are reflected in the functions of the Commission under section 28. Section 28 imposes on the Commission a broad, complex and subtle statutory mandate. The Court noted that those principles are much broader in scope than would be engaged by the mere resolution of the simple issue of whether the complainant was under duress when he signed the agreement. It was also noted that if the Commission limited itself to the issue of duress, it would be permitting others to usurp the statutory discretion of the Commission.

The Court held that in the Commission's deliberations it is engaged in administrative functions and hence is subject to a duty to observe procedural fairness. The Application for Judicial Review was dismissed. The Company's application for leave to appeal from this decision to the Court of Appeal was not granted.

In Armbro Holding Ltd. v. Purcell, the Supreme Court of Ontario was asked by the Company to make an order prohibiting the Commission from continuing its investigation of a complaint filed by Mr. Rossignol.

Mr. Rossignol's complaint alleged that the termination of his employment was discriminatory on the basis of age. Prior to filing his complaint with the Commission, Mr. Rossignol commenced a civil action against Armbro Holdings Ltd. for damages for wrongful dismissal. The Company brought an Application for Judicial Review and sought a ruling that the Commission had no jurisdiction to investigate the complaint when substantially the same issues were the subject of the civil action in the Supreme Court. The Court dismissed the application on the basis that the legislature has given primary, and, in many respects, exclusive, jurisdiction to the Commission, subject to very wide rights of appeal and, therefore, it would not be a proper exercise of its discretion if it were to make an order prohibiting the Commission from continuing with its investigation. This decision was released in May 1986.

In an appeal from a board of inquiry decision in the Tabar and West End Construction case, the Supreme Court of Ontario (Divisional Court) held that the Limitations Act applies to complaints filed under the Code. Section 45(1)(h) of the Limitations Act sets a two-year limitation period. The Court found that Mr. Tabar's complaint was barred because the facts upon which his complaint was based occurred more than two years before the complaint was filed. The Commission has filed an application for leave to appeal from this decision.

The Annual Report for fiscal year 1985/86 contained a summary of the decision of the board of inquiry in the complaint of Michael Bates against the Zurich Insurance Company. The board of inquiry found that the insurance company's automobile driver classifications of unmarried drivers under 25 contravened the Code and did not fall within the provisions of section 21. That section provides that rights under sections 1 and 3 of the Code are not infringed where a contract of automobile insurance makes a distinction on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap. The Zurich Insurance Company appealed from this decision to the Supreme Court of Ontario (Divisional Court). The Court allowed the appeal and directed that the board of inquiry decision be set aside. The board was directed to decide that the automobile driver classification for unmarried male drivers under 25 does not contravene the Code as such classification differentiation is based on reasonable and bona fide grounds within the meaning of section 21 of the Code, which allows certain distinctions in insurance on the grounds of age, sex, marital status, family status or handicap. The Commission has filed an

application for leave to appeal from this decision. A central issue is the interpretation to be placed on section 21 of the Code and, in particular, the meaning of the words "reasonable and bona fide grounds."

In the complaint of Syd Brown against the Waterloo Board of Commissioners of Police, a board of inquiry ruled in an interim decision that an employment relationship within the meaning and scope of the Code exists between a police officer and a Board of Police Commissioners. In that case, counsel for the respondent made preliminary submissions to end the proceeding for lack of jurisdiction on the basis that there was no employment relationship as contemplated by section 4 of the Code. The respondent argued that the complainant was the holder of a public office rather than an employee.

The board of inquiry ruled that it had jurisdiction to proceed with the inquiry and noted that it would be flying in the face of the direct authority of the Divisional Court if it were to conclude that the relationship of employment required by section 4 of the Code did not exist between the complainant and the respondent.

A significant ruling on the issue of damages was made by the board of inquiry in the hearing of a complaint filed by Patricia Whitehead against Servodyne Canada Ltd. and Mr. Kevin Dooling. In the case, the board held that sexual discrimination was a material element in the decision to dismiss the complainant and awarded her $34,382 in damages. The board held that the usual measure of economic loss in contract law for wrongful dismissal — lost wages during a period of reasonable notice — is not the correct measure to compensate an aggrieved complainant under the Code. If it were, the board noted that "an absurd situation would exist: an employer, by refusing to hire, let us say, black people or women, would commit a breach of the Code, but by dismissing them with sufficient notice once they became employees, would not commit a breach!" Accordingly, the board ruled that the remedy available under the Code must not be limited to recovery for wrongful dismissal at common law.

The board was of the view that an award of damages should be on the same basis as reinstatement — to place the employee in the same position as if the contract had not been broken by the employer. The board noted that this poses a difficult question to be decided, namely, how far into the future might the complainant have continued to work for the Company. In the case at hand, the issue did not have to be addressed because the Company had closed its operations. Under the circumstances, the board found that it was reasonable, indeed, highly likely, that the complainant would have continued to work for the Company until it closed its doors, and, therefore, she was entitled to compensation equal to the salary she would have earned until that time. The board noted that any award of compensation would remain subject to the complainant acting reasonably to mitigate her losses, and also to the deduction of earnings from any new employment.

In March 1987 the Commission participated in the hearing of an application for directions in the Supreme Court of Ontario brought by the Trustee of the Leonard Foundation Trust with respect to the legality of the scholarships set up by Trust. The Trust excludes from the scholarship "all who are not Christians of the White Race, all who are not of British Nationality or of British Parentage, and all who owe allegiance to any Foreign Government, Prince, Pope or Pontentate, or who recognize any such authority, temporal or spiritual." The Trust also contains a number of recitals, including one that states that "the Settlor believes that the White Race is, as a whole, best qualified by nature to be entrusted with the development of civilization and the general progress of the World along the best lines."

The Court has reserved its decision.

Charter Cases

As stated in the 1984/85 Annual Report, the coming into force of the equality rights provisions of the Canadian Charter of Rights and Freedoms on April 17, 1985 has resulted in court challenges of the constitutional validity of certain provisions of the Code, which allow for mandatory retirement at age 65 (s.9(a)) and participation in athletic activities to be restricted to persons of the same sex (s.19(2)). With respect to these provisions, two significant decisions have been released over the past year.

The case of Justine Blainey concerned a young woman who, at the age of 12 years, wanted to play hockey for a team in the Metro Toronto Hockey League (MTHL). Regulation 250 of the Ontario Hockey Association (OHA) restricted eligibility for membership to male persons. Justine was therefore ruled ineligible for membership in the OHA and denied the opportunity to become a member of the team. In the result, she was prohibited from playing on the team of her choice because of her sex. The Commission was unable to deal with her complaint because of section 19(2) of the Code. Justine therefore challenged the constitutional validity of that provision in the courts.

In September 1985 the Supreme Court of Ontario ruled that section 19(2) contravened section 15(1) of the Charter, but that the exclusion of Justine Blainey was demonstrably justified in a free and democratic society and did not infringe the Canadian Charter of Rights and Freedoms.

An appeal from the decision of the Supreme Court of Ontario was taken to the Ontario Court of Appeal. On April 17, 1986 the Court of Appeal (Finlayson J.A. dissenting) ruled that section 19(2) of the Code denied Justine Blainey the right to equal treatment and the equal benefit of the Code because of her sex and, therefore, was unconstitutional and of no force and effect. The Court found that section 19(2) was inconsistent with section 15(1) of the Charter and could not be defended as a reasonable limit under section 1 of the Charter. The Court also noted that there was no evidence that males were being denied the right to full membership and participation in athletic organizations. Therefore, the Court was of the view that section 19(2) resulted also in adverse effect discrimination against females. Since the Court declared section 19(2) of the Code to be unconstitutional, Justine Blainey was able to pursue her complaint before the Human Rights Commission.

An application for leave to appeal from the decision of the Court of Appeal was dismissed by the Supreme Court of Canada.

From a procedural perspective, Mr. Justice Dubin in the Blainey case commented that normally, counsel for a tribunal, where its enabling statutory authority is under attack, supports the jurisdiction conferred upon it by its enabling statute or submits its rights to the Court. However, he observed that it is well known that with the introduction of section 15(1) of the Charter, all branches of government are giving close scrutiny to legislation previously enacted with a view to satisfying themselves that it is now consistent with the Charter. Mr. Justice Dubin concluded that that study had obviously been undertaken by the Human Rights Commission and, under such circumstances, it was quite appropriate for counsel to provide the benefit of that review to the Court.

The issue of mandatory retirement at the age of 65 was addressed by the High Court of Justice of the Supreme Court of Ontario in the McKinney decision, which was

released on October 15, 1986. In that case a number of professors and a librarian who were facing mandatory retirement because they had reached 65 brought applications against the universities that employed them for an order declaring that section 9(1)(a) of the Code was inconsistent with section 15(1) of the Canadian Charter of Rights and Freedoms and, to the extent of the inconsistency, was of no force and effect. Section 9(1)(a) defines "age" with respect to employment under section 4(1) of the Code, to mean "an age that is eighteen years or more and less than sixty-five years."

On the issue of the constitutional validity of section 9(1)(a) of the Code, the Court was of the view that the provision is inconsistent with section 15(1) of the Charter to the extent that it defines "age" to be less than 65 years. However, the Court held that at the present time and in the context of the contractual relationships proven, section 9(1)(a) constitutes a reasonable limit that is demonstrably justified in a free and democratic society under section 1 of the Charter. The applications were dismissed. The decision is being appealed.

Amendments

In the past year, a number of provisions in the Code have been amended or repealed as a result of the Equality Rights Statute Law Amendment Act. The purpose of that Act was to amend certain Ontario statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms. The amendments to the Code are set out below.

The following amendments became law on December 18, 1986:

- Sexual orientation has been added as a ground in sections 1, 2(1), 3, 4(1) and 5.

- Section 9 has been amended to include: "the right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant."

- Section 3(a) has been amended to provide:

  (1) Every sixteen- or seventeen-year-old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

  (2) A contract for accommodation entered into by a sixteen- or seventeen-year-old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old.

- Section 19(2), which provided that restriction of membership in an athletic organization or participation in an athletic activity could be restricted to members of the same sex, has been repealed.

- Section 20(3), which provided that the Code did not apply in situations of discrimination on the basis of marital status with respect to the occupancy of residential accommodation,

has also been repealed. Similarly, section 20(4), which provided that the Code did not apply in situations of discrimination on the basis of family status with respect to the occupancy of residential accommodation, has been repealed.

- Section 47(a), which set out the regulation-making power of the Lieutenant-Governor in Council, has been amended to allow for regulations prescribing standards for assessing what is undue hardship for the purposes of sections 10, 16 or 23.

The following amendments will come into force on a day to be named by proclamation of the Lieutenant-Governor:

- Section 10 will be repealed and the following substituted:

  10.—(1) A right of a person under Part 1 is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

  (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

  (b) it is declared in this Act, other than in section 16, that to discriminate because of such ground is not an infringement of a right.

  (2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

  (3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsection 16(1) will be repealed and the following substituted:

  (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

- Section 16 will be amended by adding the following subsections:

(1a) The Commission, a board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(1b) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsection 16(2) will be amended by striking out "the provision of access or amenities or as to" in the fifth and sixth lines.

- Section 23 will be amended by adding thereto the following subsections:

(2) The Commission, a board of inquiry or a court shall not find that a qualification under clause (1)(b) is reasonable and bona fide unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

- Subsections 40(2) and (3) will be repealed.

ROLE AND ACTIVITIES OF THE

RACE RELATIONS DIVISION

1986/87

Introduction

Fiscal year 1986/87 signalled a new way of thinking about race relations in our communities. People recognized the social and economic benefits to be derived in a province as diverse as Ontario by ensuring that all members of our communities are welcome and assured of full participation. Throughout Ontario, this message was repeated by different groups and in various regions; if this province is to continue to prosper by attracting the skills and investment of people from around the world, there must be racial harmony and fairness to all.

The work of the Race Relations Division, in partnership with the community, has carried that message forward and assisted others to put it into practice. The Division was able to expand its service by assigning four new regional consultants to London, Kingston, Sudbury and Kenora in addition to the existing regional consultants in Windsor, Hamilton and Ottawa.

The Division's statutory mandate under the Ontario Human Rights Code has been, in part:

> to inquire into incidents of and conditions leading or tending to lead to tensions or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
>
> to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
>
> to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;

On May 28, 1986 Premier Peterson officially proclaimed the new Ontario Policy on Race Relations, which states in part that:

> The Race Relations Division of the Ontario Human Rights Commission will develop policies and programs to promote harmonious race relations in this province. In particular, it will promote and evaluate activities on racial issues by the Ontario government, its agencies and the private sector to assist in the achievement of this goal.

Consistent with the principles outlined in the Race Relations Policy, the Division has adopted a proactive strategy to ensure that institutions such as school boards, municipal governments, employers, unions and social service organizations are provided with technical assistance to develop and implement their own race relations policies and programs. This approach recognizes the need for all institutions in Ontario to assume responsibility for promoting harmonious race relations and the equitable treatment of minorities in employment and the provision of services.

The success of these institutions, whether in profit margins or quality of service, will be enhanced by their ability to incorporate racial equality principles into their operations. Therefore, in 1986/87, the Division placed increased emphasis on employment equity, education equity and service equity. It also maintained close contact with community-based organizations to ensure that their race relations issues were addressed and that their views and expertise were taken into consideration in our work.

In addition, the Division has increased its consulting role with Ontario government ministries and particularly with the Cabinet Committee on Race Relations. This is in recognition of the pivotal role that individual ministries can play in implementing the government's Race Relations policy.

Throughout the province, outreach to Native people has also increased to ensure that race relations issues, particularly in urban centres, were being addressed. At the same time, the Division has placed an emphasis on the special needs of visible minority women and youth who face significant barriers in achieving equality of opportunity. Finally, the Division increased its work in the area of policy and research development, including contact with other provinces and countries to collect information and share experiences.

Regional Activities

In the summer of 1986 the Division added four new regional race relations consultants. In addition to existing positions in Ottawa, Hamilton and Windsor, the Division added consultants in Kenora, Sudbury, London and Kingston. This staff enrichment allowed the Division to hold more institutional and community consultations; undertake new proactive projects; identify and respond to a greater number of racial incidents; and develop profiles identifying race relations issues in each region of the province. The Division was subsequently able to provide a more comprehensive and co-ordinated service throughout the province.

East

The Division co-sponsored a seminar entitled "Promoting Accessible Health and Social Services" for approximately 50 senior health and social service agency managers in Ottawa. The goal of the seminar was to sensitize participants to the changing racial composition of Ottawa's population, the barriers facing minorities in the health and social service sectors and possible policies and practices which agencies can adopt to serve their clients better. The seminar also attracted new members to ACCESS (Advisory Committee on Ethnic Social Services) which co-sponsored the seminar with the Division.

Division staff organized a series of consultations in Ottawa conducted by the Race Relations Commissioner. Consultations were held with the Directors of Education of the Carleton Board of Education and the Ottawa Board of Education, the Ottawa

Police Force, the Mayor of Ottawa, the Advisory Committee on Visible Minorities (City of Ottawa), minority women's groups, the Canadian Human Rights Commission and Multiculturalism Canada.

A conference entitled "Achieving Equality for Ethnic and Visible Minorities" was organized with the National Capital Alliance on Race Relations and the Ottawa-Carleton Immigrant Service Organization. The focus of the conference, which was held in two sessions covering two and a half days, was to increase the awareness of community members to human rights legislation and to examine community and legal strategies to promote equality.

The Division also co-sponsored three half-day race-related training sessions for members of the Committee for Immigrant Services in Eastern Ontario (CISEO). CISEO is an umbrella organization made up of staff members of immigrant aid services in Eastern Ontario.

In the summer of 1986 the Division participated in the Multicultural, Multiracial Leadership Camp held by the Ottawa Board of Education and five other Eastern Ontario Boards of Education. Division staff helped plan and deliver the camp's program. In addition, the Division co-sponsored a one-day follow-up seminar six months later. At this seminar, teachers and students representing each participating school reported on race relations initiatives they have undertaken since the camp. A planning session was then held to determine ways to improve the program for next year's camp.

The Division helped plan and organize a seminar for the Ethiopian community in Ottawa. The title of the seminar was "Ethiopia: The Other Story" and was about popular images of Ethiopia. The seminar was developed in response to concerns in the Ethiopian community about stereotyping of Ethiopia and Ethiopians. The keynote speaker was the Honourable David McDonald, Canadian Emergency Co-ordinator for the African famine.

The race relations consultants in Ottawa and Kingston made a joint presentation to the senior staff and the education officers of the Ministry of Education's Eastern Ontario regional office on race relations and employment equity to assist them in their work with individual school boards.

Consultations were held with representatives from three Kingston area school boards and St. Lawrence College on race relations and employment equity initiatives that can be undertaken. In addition, liaison has been established with the Eastern Ontario Employment Equity network, a network for school board employment equity co-ordinators.

A series of consultations was also held in Cornwall with both institutional and community representatives. One set of consultations was with St. Lawrence College, the Stormont, Dundas and Glengarry County Board of Education and the Akwesasne Board of Education (on the Akwesasne Reserve) to examine issues facing Native students in the education system. Additional consultations have been held with the Akwesasne Board Council and the local Ontario Provincial Police detachment to discuss policing on the reserve.

The Division has established liaison with a number of community groups and agencies in the Kingston area. There is an emerging interest within the area in community development and forging links between community groups in order to address race relations issues.

Southwest

The City of Windsor has struck a municipal race relations committee to be chaired by the Mayor of Windsor and to include representatives from racial minorities and key area institutions. The Division played an important role in the development of the committee, first suggesting the need for such a committee to the former Mayor, and, later as a member of the City of Windsor's Task Force on a Municipal Race Relations Committee, which developed the terms of reference for the committee and the criteria for membership.

In the spring of 1986 the Division co-sponsored a major one-day conference on race relations for educators from the four boards of education in the Windsor area as well as the University of Windsor and St. Clair College. About two hundred people attended, including community leaders, university professors, school principals, administrators, trustees and students. Both the Minister of Labour and the Race Relations Commissioner addressed the conference. In addition, the Race Relations Commissioner held a series of consultations prior to the conference. These included meetings with the Mayor of Windsor and a number of community organizations.

The Can-Am Indian Friendship Centre of Windsor, in co-sponsorship with the Race Relations Division, held a one-and-a-half-day conference entitled "Perspectives on Race Relations." There were 100 people in attendance from Windsor, Essex County and the Walpole Island Reserve. The speakers and workshop facilitators were well known figures in the Native community, whose presentations included speeches on the history of racism from a Native perspective, self-government and the constitutional talks and Native women's issues.

The Division co-sponsored a conference with the Multicultural Council of Windsor and Essex County entitled "Human Rights, Race Relations and Citizenship, Unexplored Horizons." Over 100 people attended. The Division gave a workshop on racism in the workplace in conjunction with the Windsor District Labour Council.

The Division also organized a one-day youth conference with the Windsor Black Coalition. Approximately 150 Grade 11 youths from a number of Windsor high schools participated. Speeches, workshops and plenaries focused on two principal themes: barriers to participation in the work force and resources to overcoming such barriers.

The Division provided a series of race relations training sessions to the Leamington Police Force. Similar training is being planned for other area police forces.

In early 1987 staff organized a series of meetings in London that were conducted by the Race Relations Commissioner. Events during the two-day visit included consultations with the Native community, educators and health professionals. A lunch for human resource personnel from major London area employers was held, and an evening reception attracted 120 community and institutional representatives. The trip received extensive media coverage.

The Health sector is a major employer and service provider in the London area. In addition to consultations with key health institutions and unions, and several presentations to the Thames Valley District Health Council, the Division has been active in facilitating the development of a multicultural, multiracial health coalition.

The Division has been working with the Lambton County Board of Education, the London Board of Education and the University of Western Ontario with regard to the development of race relations policies. In addition, liaison has been established with Ministry of Education personnel active in this area.

The Division has been involved in a seven-part training program being given to youth employment counsellors from a variety of programs in the London area. The focus of the training has been on providing service to a multiracial clientele. The Division provided training on race relations and help in planning a one-day follow-up to this extended training program for both counsellors and minority youth.

Southeast

A one-day conference on race relations organized under the auspices of the Hamilton Mayor's Committee on Race Relations was co-sponsored by the Division. The approximately 300 people who attended included high school students and community, union and business representatives from the Hamilton area. The Race Relations Commissioner delivered the concluding speech. Other speeches were given by the Honourable Lily Munro and the Mayor of Hamilton. The 12 workshops were on a wide range of topics to appeal to the variety of participants. Two workshops, one on Race Relations in the Workplace, the other on Neighbourhood Race Relations were presented by Division staff.

The Waterloo County Board of Education suspended the teaching of the Merchant of Venice in its Grades 9 and 10 classes following community complaints that one of the outcomes of teaching the play was the harassment of Jewish students. The Division has been endeavouring to resolve this matter by working with the Waterloo County Board and the Ministry of Education on such matters as an adoption of a race relations policy by the board of education, and offering appropriate resource material and race relations training programs for teachers. The Division has also been involved in addressing several incidents related to the teaching of Huckleberry Finn and its impact on black students.

In order to reduce racial tensions in a housing complex in Brantford, the Division has been working in conjunction with the Brantford Police and the Brantford Race Relations Committee. Efforts have included the fostering of a neighbourhood committee, a summer youth activity program and monthly community forums at which issues including race relations and human rights have been discussed.

The Division also mediated a dispute between the Ontario Lacrosse Association and two Six Nations Reserve lacrosse teams over safety at lacrosse games.

The Division assisted the City of Hamilton with an employment equity audit of its work force. In addition, the Division has consulted with the Cities of Kitchener and Brantford regarding the results of their workplace audits and strategies to address visible minority participation in the work force.

The Division delivered two race relations training sessions to 35 managers of a large area public transportation company. The focus of the sessions was on developing skills to deal with race relations issues and incidents in the workplace, as well as providing appropriate service to a multiracial community.

Over 100 people attended a Religious Founders Day conference in Brantford to learn more about seven different faiths. Division staff provided the keynote address and chaired the proceedings.

North

The Race Relations Commissioner visited Northwest Ontario to hear local race relations issues, to outline the work of the Division and to encourage race relations initiatives. In Fort Frances, the Commissioner addressed a conference on Native Access to Justice and spoke to municipal officials; in Kenora, the Division hosted a lunch for the Mayor and other institutional representatives and met with Native college students; in Sioux Lookout, the Commissioner was interviewed by the Wawatay Communication Group on television and radio, and in Thunder Bay the Division hosted a lunch for 60 community and institutional representatives and met with the Thunder Bay Friendship Centre staff. The trip received extensive media coverage and has led to a number of specific Division projects.

The Division co-sponsored a two-day conference with the Ministry of the Attorney General on "Native Access to Justice." The conference was held at the Couchiching Reserve and was attended by representatives from reserves and friendship centres in the Kenora and Fort Frances areas. The workshop on Human Rights and Race Relations generated much interest and many recommendations to the Division for outreach to Native communities.

In part as a result of the Race Relations Commissioner's visit to Northwest Ontario, the Thunder Bay Indian Friendship Centre initiated a telephone hotline for Natives who feel they have been racially discriminated against or harassed in the city. The Division helped train hotline staff. This hotline is seen as a prelude to forming a task force in Thunder Bay to address outstanding race relations issues facing Native people. The Division is also assisting the City of Thunder Bay in its consideration of a race relations policy and in its interest in developing a race relations training program for its managers.

The Division, in co-operation with Lake of the Woods District Hospital, organized a health careers day for Native high school students in Kenora. This day involved presentations by a number of health professionals from the hospital to Native students to encourage them to consider health careers.

The Race Relations Commissioner visited Sudbury to be the keynote speaker at a conference organized by the Sudbury Race Relations Committee. The conference, attended by approximately 70 community and institutional representatives, focused on race relations in the workplace and in education. Division staff assisted in leading a workshop on race relations in employment. In addition to attending the conference, the Commissioner held a press conference, spoke at a luncheon meeting for community and institutional representatives co-hosted by the Division and the Sudbury Multicultural Centre and visited the N'Swakamok Native Friendship Centre, where representatives from a number of local Native organizations were in attendance to hear a speech by the Race Relations Commissioner.

A number of incidents involving Native youth, the education system and the police have occurred in Timmins. The Division has been active in working with the Timmins Friendship Centre and other Native organizations, school officials and the police to address these incidents and to develop preventive measures.

The Division provided a one-day training session in Sudbury for Native court workers of Friendship Centres from across the province. Training included identifying race relations issues in the criminal justice system and developing strategies to address such issues. This training program was designed in co-operation with the Ontario Federation of Indian Friendship Centres as a pilot project. It is hoped that this type of training can be used by other friendship centres' staff.

A number of Libyan and Lebanese foreign students attending Northern College in Kirkland Lake encountered problems following a racial incident. Racial tensions escalated further following an arson and some misleading media coverage, which incorrectly attributed the arson to the students. Division staff visited Kirkland Lake and met with foreign student representatives, the foreign student adviser, the Deputy Chief of Police and the Mayor. As a result of this incident, contact was established with the Canadian Bureau of International Education, and the Division has agreed to provide resource materials for their international student advisers.

The Division has also provided a number of race relations training sessions to education and social services providers in Sudbury, North Bay and Sault Ste. Marie.

Metro Toronto Region

Education

The area of education is a key subject area for the Race Relations Division. In the past four years it has worked closely with the Board of Education for the City of Hamilton in developing curriculum materials on human rights and race relations for Grades 9 to 12 Man in Society and English courses. The materials were tested in classrooms by eight school boards in 1986. The Ministry of Education has indicated a willingness to adopt the materials for use throughout the province.

The Ministry of Education received assistance from the Division in developing a model race relations policy, which will be made available to all school boards in the province. The Division is also participating in a Ministry of Education committee that is examining the issue of the placement and assessment of minority students in the school system.

The Division has also actively assisted four school boards in the development of their own race relations policies. At the same time, Division staff assisted those that have already developed such policies in their actual implementation.

Numerous training sessions, seminars, workshops and speaking engagements on race relations issues were undertaken in the education sector.

Law Enforcement/Criminal Justice

The Division assisted the Council in Race Relations and Policing in the development of guidelines for police training in intercultural communications and race relations. It initiated meetings with ethnocultural service agency networks to discuss their own roles and responsibilities in improving police/minority relations. With the Black Inmates and Friends Assembly, the Ministry of Citizenship and Culture and York University, the Division jointly organized a conference entitled "Understand My Plight". The conference addressed race relations problems blacks encounter in the criminal justice system, with particular emphasis on correctional institutions. The conference also aimed to promote and encourage open discussion of racial problems in the criminal justice system.

Business and Industry

The Division responded to complaints by the Canadian-Arab Federation regarding "The Nomad Doll," which was produced and distributed by Coleco.

The doll represented a stereotypical image of Arabs, and the packaging described Arab "nomads" as terrorists and "people without honour." In co-ordination with the office of the Minister of Labour, and continuous liaison with community representatives, the Division was instrumental in having the doll removed from department stores. In addition, the company agreed to cease production of the item.

In the fall of 1986 the Division assisted the Afro-Canadian Congress in holding a conference on employment equity. The conference presented an overview of employment equity issues, including its relevance to minority communities; how it has been implemented in both federal and municipal governments and the private sector, and its impact on the work force and in the workplace.

The Division also participated in conducting an analysis to identify the training needs and skills required by teachers in the English as a Second Language program in the Ministry of Citizenship and Culture. The Division served as the primary resource for the race relations aspects of the programs, focusing on the workplace, where problems of intercultural communication and racial conflict often figure prominently. The project also involved development of a manual and a directory of resources that are available to English instructors in the workplace. Recommendations were made on future training needs.

The Division was also involved in a pilot project with George Brown College in Metro. This project included the design and delivery of 10 train-the-trainer sessions as well as the design and delivery of management training programs. The Division assisted in the development of a comprehensive training manual, the first of its kind, for use throughout the hospitality industry.

Unions

The Division maintained an active liaison with numerous union locals as well as with their central organizations. One major union was assisted by the Division in developing employment equity measures and another was assisted in updating the anti-discrimination clause in its collective agreement.

The Commissioner spoke at a number of dinner meetings organized by the Ontario Federation of Labour across the province and was keynote speaker at a conference held by the Canadian Auto Workers. Issues addressed included the need to include, or update, anti-discrimination clauses in collective agreements and the need for increased participation by racial minorities in union leadership. The Commissioner also met with and addressed representatives of the International Ladies Garment Workers Union and the United Steelworkers Union.

The Division has also provided ongoing advice and assistance to the Ontario Federation of Labour Human Rights and Race Relations Committee.

Municipal Government

Staff continued to assist various municipal governments to develop initiatives on race relations issues. In the municipalities that have Race Relations Committees, the Division acted as consultant, and in those without such committees, the Division was instrumental in acting as a resource for such a development.

In Pickering, for example, the Division assisted the Mayor to set objectives for a Mayor's Task Force on Race Relations.

Media

When the Chinese-Canadian community expressed concerns about inappropriate media coverage by a major Metro-based newspaper, the Division acted as mediator. As an outcome of the mediation, the newspaper agreed to sensitize its staff to the need to provide a more balanced portrayal of racial minorities. The Division agreed to assist in such a training program, to be organized by the Urban Alliance on Race Relations.

Housing

In an effort to maintain a positive race relations climate, the Division continued its involvement in the various housing complexes across Metro. For example, two female members of a South Asian family expressed concern that they were being subjected to racial harassment by a group of white youths while on their way to a mosque for evening prayers. The harassment took the form of racial name-calling, constant knocking at their door and repeated taunts on their way to the elevator. Division staff met with the community relations workers of Metro Housing to deal with the issue. With the involvement of Metro police and the public housing security staff the problem was resolved. The Division continued to monitor the situation in the housing complex.

A race relations training seminar was designed and delivered to a company which provides services to the Metro Toronto Housing Authority (MTHA). The training dealt with problems actually encountered by the participants on the job. The seminar, which was attended by 22 officers and three members of personnel management, contributed to assisting the participants to deal with racially sensitive incidents that they experience in their day-to-day work.

The Division also held a series of meetings with residents and youth to review community concerns about incidents involving police and visible minority families in a MTHA project. A meeting was called by the Commissioner for Race Relations, which included local tenants, institutional representatives, senior officials of the municipality and the police. Strategies to deal with the volatile situation were discussed and later pursued with the active participation of the Division.

Since the appointment of the Director of Race Relations for MTHA, in the fall of 1986, the Division has been assisting the new director to develop a comprehensive race relations program.

Religious Institutions

The Division acted as mediator in a protest by some community members in Vaughan Township against the building of a mosque and community centre in the area. The Division met with the ratepayers association, members of the Islamic community, local municipal government representatives and leaders of other religious organizations to reduce tensions and eliminate misunderstandings fostered by hate propaganda and to encourage the development of preventive measures for the future.

The Division was also actively involved in the planning of a four-day conference of Anglican Church officials, at which was discussed increased involvement of racial minorities in mainstream churches.

Health and Social Services

The Division conducted numerous workshops and training sessions in organizations dealing with health and social services in Ontario. For example, the Division co-sponsored with The Race Relations Committee of Scarborough Human Services a seminar on the need for new strategies for service to a multiracial community. The Commissioner also participated in a training session for a social service agency whose clients are predominantly young people. His remarks centred on the special needs of racial minority and immigrant families.

The Division also assisted an organization that provides mental health services for the South Asian community with respect to its needs for additional resources in serving its clientele.

Community Relations

The Division has long been involved in mediations in Metro Toronto to alleviate racial conflict in the community. To assist in responding to racial problems, the Division established a committee of representatives of the federal, provincial and municipal governments to develop a co-ordinated approach to deal with some of the underlying causes of racial tensions in Metro Toronto. The committee has continued to meet, since its formation, to develop remedial strategies.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal Year 1986/87 completes the fourth year of the implementation of the provisions of the Code relating to handicap. Amendments to the Code in 1986 brought significant changes to these provisions and will provide that constructive discrimination applies to discrimination on the basis of handicap and that there is a duty to accommodate such persons. Once the amendments are proclaimed as law, it will be illegal to deny a person with a handicap services, goods, facilities or accommodation because of lack of access to premises or lack of appropriate amenities. It will be necessary to provide such access or amenities unless to do so would cause undue hardship considering the cost, any outside funding and any health and safety requirements. Additionally, consideration will be given to any standards prescribed by regulation for assessing what constitutes undue hardship.

Handicap is defined in the Code as any degree of physical disability, mental retardation or impairment, learning disability or mental disorder. However, the Code has been amended to include discrimination against a person because he or she has received Workers' Compensation benefits. The inclusion of "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act" in the definition of handicap allows injured workers who can perform the essential duties of the job to compete equally with persons who have not received such benefits. In addition, the employer has a duty to make reasonable efforts to accommodate persons who have been injured on the job.

Although a significant number of the complaints based on physical or mental handicap is handled in the regions, the Unit for the Handicapped continues to perform a specialist and consultative role. This means that the more complex complaints and issues relating to discrimination because of handicap are handled by the Unit. The Unit is also responsible for developing policy proposals in the area of discrimination on the basis of handicap. A committee, chaired by Commissioner Catherine Frazee, has been established to recommend programs and policies in this area.

A number of policies were developed by the Commission during the fiscal year, including the application of the Code to alcoholism and obesity. These policies are discussed later in this report.

The Commission's policy on insurance contracts was clarified and strengthened during the past year, emphasizing the strict requirement of objective and bona fide evidence to support the denial of insurance to any person with a handicap as defined by the Code, as well as the assessment of any individual's eligibility for insurance.

Statistics on the total number of complaints received indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 37 per cent of all complaints filed during 1986/87.

ACTIVITIES 1986/87

Complaints of Discrimination

During the period of April 1, 1986 to March 31, 1987 the Commission received 626 formal complaints. Over this period, 509 were closed with 352 settled, 74 dismissed by the Commission due either to lack of jurisdiction or lack of evidence to support the complaint, nine were refused under section 33 and 74 were withdrawn by the complainants.

Of complaints filed, 85 per cent were on the ground of physical handicap, eight per cent were on the ground of mental handicap and seven per cent related to claims under the Workers' Compensation Act. The types of handicaps are shown in Table 7.

The Commission continued to examine such issues as visual acuity, colour vision deficiency, diabetes and epilepsy in relation to the physical standards for fire fighters and police officers.

For example, a job applicant who failed the Police Department's colour vision test filed a complaint alleging that it was not necessary to have perfect colour vision to be a police officer. The respondent took the position that good colour vision was a prerequisite in describing vehicles and clothes worn by suspects. However, the complainant could correctly identify the colours of all vehicles, clothing and objects.

The Canadian Ophthalmological Society representing the medical experts recommended that minor colour deficiencies would be acceptable and a less rigorous test such as the Farnsworth D-15 Test would be suitable for police constables as opposed to the standard Ishihara test. The Ishihara test determines whether the individual sees colours perfectly, while the less-rigid Farnsworth D-15 test assesses whether the individual sees colours within acceptable limits for the performance of the specific job functions.

As a result of these discussions, the respondent agreed to give the Farnsworth D-15 test to those applicants without perfect colour vision. This practice is now in place.

In their consultative role, members of the staff assisted employers in their understanding of and compliance with the Commission's policy on employment-related medicals and the requirement to assess, objectively, an employee's ability to perform the essential duties of the job.

Several cases resulted in precedent-setting board of inquiry decisions during the past fiscal year. A number of decisions are highlighted below.

In Hickling, Horbay, Legris and the Lanark Leeds and Grenville County Roman Catholic Separate School Board, the parents of three children classified as "trainable mentally retarded" alleged that their children were denied a Catholic education because of handicap. The children had to attend public schools for part of each day in order to receive the special education they required. The respondent school board claimed that these educational needs could not be met within the separate school system and that the children spent enough time in a separate school to receive a Catholic education.

The board of inquiry found that the students were denied a full Catholic education because of mental handicap, and that the separate school board had not made reasonable efforts to accommodate the three children. The respondent is appealing this decision.

Another board of inquiry, Shears and Corbrook Sheltered Workshop, had been appointed to hear the complaint of a man with epilepsy who had suffered several seizures during 1983 and 1984 at the sheltered workshop he had attended for 13 years. The sheltered workshop suspended Mr. Shears and made his attendance conditional upon his wearing a safety helmet for reasons of safety after he had experienced the seizures. The board of inquiry heard medical evidence indicating that the complainant had a phobia about wearing a head covering and that, in any event, his safety would not be enhanced by wearing a helmet. Moreover, his medication had been changed and he had been free of seizures for some time. The parties reached a settlement of the complaint during the hearing, and the complainant received $3,000 in special damages and was allowed to return to work without a helmet. The respondent made adaptations to the complainant's work station, which minimized the potential of risk in the event of a seizure.

Mr. Kellerman, a man with cerebral palsy, had alleged that he was refused the glass of wine he had ordered with his lunch in Al's Restaurant and was roughly escorted out of the establishment before he had finished his meal. The respondent claimed that Mr. Kellerman appeared to be intoxicated, and had made a mess while eating. The board of inquiry found that the complainant had been discriminated against in being denied the alcoholic beverage and escorted out before he wished to leave. Mr. Kellerman was awarded $500 in general damages.

Another complaint involved a man who had worked for a branch of the Royal Canadian Legion for approximately 13 years. He alleged that, in 1983, while in hospital with cancer of the larynx, he was advised by the respondent that he could resume working when he was fit to return. When he attempted to do so, he was laid off indefinitely due to a shortage of work. However, the complainant maintained that he had been replaced by another employee. He claimed that there was no shortage of work and alleged that the employer did not wish to place him back into his position following his illness because it was felt that he could no longer effectively perform his duties.

The respondent indicated that the Legion was prepared to reinstate the complainant. However, he had already accepted another job.

A board of inquiry was appointed to hear the complaint. However, the matter was settled prior to the hearing. The board endorsed the settlement, which included a payment of $2,200 in damages to the complainant as well as a letter of assurance from the respondent to the Commission indicating that their employment practices conform to the requirements of the Code.

Other cases referred to boards of inquiry during the fiscal year involve the following issues:

- The use of employment medicals to screen job applicants prior to an offer of employment;

- Whether employees with such disabilities as a shoulder injury, visual impairment, cerebral palsy, diabetes, epilepsy, knee injury, hearing impairment or back injury were capable of performing the essential duties of such jobs as coal handler, assembler, grocery clerk, driver, file clerk and machine operator;

- A determination of damages to be awarded to job applicants or employees who had not been objectively assessed to determine their ability to perform the essential duties of the job.

- Whether a handicapped employee had the right to assume a risk of injury when the risk is only to himself or herself;

- Whether a condominium corporation had a right to deny the occupancy of accommodation to former psychiatric patients in a group home setting; and

- Whether a board of education should provide an elevator in a two-storey school building for a student who was in a wheelchair.

Public Education

The staff continued to play a role in educating the public about the rights of disabled persons under the Code. In fulfilling this function, staff members participated in workshops, seminars and panel discussions with various organizations and associations, including the Personnel Association of Toronto; Unionville High School; the staff at Lyndhurst Hospital, St. Joesph's Hospital, the Workers' Compensation Board and the Delta Chelsea Inn, the Ontario Library Association and the Occupational Health Nurses' Association.

In addition to the educational function, the staff provided consultation on the interpretation and application of the provisions of the Code. This consultative service has been provided to business, industry, unions, vocational associations, health care professional associations, consumer groups and agencies throughout the province. Those who consulted the Unit included the Muscular Dystrophy Association, Ontario Hydro, York Elevator, Canadian General Electric, Mohawk College, the City of Hamilton, the City of Etobicoke, the Canadian Hemophilia Society (Ontario Chapter), Annis Steel Service, Creditel Company, the Ontario Medical Association, People United for Self Help (Ontario) and the City of Ottawa.

Inter- and intra-governmental discussions were held with human rights commissions and other ministries, agencies and departments. The Ontario Ministry of Community and Social Services, the Saskatchewan Human Rights Commission, the New Brunswick Human Rights Commission, the Alberta Human Rights Commission, the Canadian Human Rights Commission, the Ontario Ministry of Health and the Ontario Secretariat for the Disabled are among the government agencies that have been provided with consultative services.

Staff Training and Development

Ongoing consultations and training sessions are conducted for the Commission's staff on new policies, current issues and approaches for dealing with discrimination because of handicap. The Commission develops and acquires resource information about discrimination against disabled persons. These materials deal with such subjects as legislative initiatives, related legal interpretations and case law. This information allows staff to keep abreast of new developments in North America and other countries.

Program and Policy Development and Research

Having established a policy regarding employment-related medical examinations in 1985/86, the Commission reviewed many employment medicals that were voluntarily submitted by employers during 1986/87. As well, the Commission has negotiated compliance with this policy among employers against whom complaints were filed on the issue.

The Commission has developed policies on alcoholism and obesity as handicaps and on requests for a driver's licence number or a valid driver's licence on employment application forms.

Guidelines on discrimination on the basis of handicap in insurance are now being developed. Research is also being conducted with respect to an employment policy to test job applicants for the use of certain drugs.

A research report has been prepared on the issue of risks to which handicapped employees are exposed in the workplace. The study includes definitions of terms, an analysis of societal attitudes towards workers with handicaps, the concept of "dignity of risk" and methods for assessing and minimizing risks in the work setting. Also addressed are the legal issues relating to risk and disabled workers as well as a review of legislative protections for employees with handicaps in other jurisdictions.

Further information on these policies can be obtained from the Unit for the Handicapped.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1986/87

EMPLOYMENT

Handicap

The complainant, a woman with epilepsy, had been placed in a housekeeping position in a nursing home on a community college training program. She had been evaluated as performing her job duties competently. Several months later, she applied for a permanent position in the same department and was required to undergo a medical examination as part of the screening procedure. She was informed that she could not be placed in the job because of her epilepsy. She filed a complaint, alleging that she had been discriminated against in employment because of handicap. Her complaint also alleged constructive discrimination contrary to section 10 of the Code because of the employer's requirement that job applicants must undergo pre-employment medical examinations.

During the investigation, the Commission was informed, by the complainant's co-workers and supervisor, that the complainant had been an excellent worker who had performed almost all duties on her job description satisfactorily. The only duty she had not performed was scrubbing the floors with a floor polisher. However, this heavy appliance is only used once a year, and it turns off automatically when the operator lets it go. The other workers therefore stated that the polisher would not be a hazard in the event that a person operating it suffered a seizure.

The Commission sought the opinion of two medical experts who examined the complainant. They stated that her epileptic condition does not prevent her from doing any of the duties described in the job description, and that the performance of these duties would not place her or her co-workers at risk. The evidence supported the allegations.

As a means of settling the complaint, the parties agreed to the following proposals:

- the respondent would offer the complainant the next available position in the housekeeping department;

- the respondent would pay the complainant the sum of $3,000 representing compensation for lost earnings and mental anguish;

- the respondent's policy regarding employment-related medical examinations would be amended to bring it into compliance with the Code.

* * * *

A man who had received treatment for depression alleged that his employer of 15 years terminated his employment because of his mental disorder. He had been

absent from work on several occasions in 1982 and later in 1985. Upon his return from sick leave in 1985, he was informed of his dismissal, despite the written assurances of his doctor that he was fit to return to work.

A Fact Finding Conference was held among the parties to determine their positions with respect to the allegations and to attempt to effect a resolution of the complaint.

The respondent claimed that the complainant had problems with his work performance. Therefore, the abilities and job performance of the complainant were compared with those of the individuals who had been hired in his position since he left the company. It was learned that the complainant's performance had been equal to or better than that of his co-workers except for the periods he had been under treatment, and his productivity had been consistently high. The weight of the evidence tended to support the allegations.

In settlement, the parties agreed to the following terms:

- the complainant was re-hired and offered a new position with the company to commence immediately, and was placed on three months' probation in accordance with company policy;

- the complainant's performance would be reviewed at the end of three months, and an assessment made of his progress;

- the employer would notify the Commission of any decision to dismiss or transfer the complainant because of unsatisfactory performance.

* * * *

The complainant had cerebral palsy and walked with the aid of crutches. He had just begun a three-month contract as a clerk with an Ontario Government agency when he was informed that his contract was being terminated at the end of the week. He telephoned the Commission, alleging discrimination in employment because of handicap.

Because the job was still available, the Commission dealt with the complaint by the priority case handling method. The Commission contacted the employment agency that had referred the complainant and was informed that the respondent had dismissed him because his job duties required him to negotiate a flight of stairs occasionally to retrieve documents.

The Commission then telephoned the employer, explained the Commission's mandate and informed him of the complaint. They discussed the job requirements and the employer's duty to make reasonable efforts to accommodate the complainant's handicap.

The employer acknowledged that arrangements could easily be made to enable the complainant to return to the job, and his three-month contract was restored. The Commission offered assistance to the employer in accommodating workers with handicaps.

This settlement was confirmed in writing.

* * * *

The complainant had been required to undergo a medical examination shortly after commencing his employment as an assembly line worker. A month later, he was advised that he was laid off for "medical reasons." Because these reasons related to the medical history of his parents, and had nothing to do with his own medical condition, he filed a complaint alleging discrimination in employment because of handicap.

During the investigation, the Commission sought the opinion of an independent physician on the complainant's ability to perform the essential duties of the position. The evidence indicated that he was able to do so, and, indeed, had already performed in the job for over a month.

Because a settlement could not be reached, the case was referred to a board of inquiry. However, the company subsequently made an offer of settlement, which was acceptable to the complainant and Commission:

- the respondent provided the complainant with the sum of $1,700 in compensation for lost earnings and mental anguish;

- the company modified its policy regarding employment-related medical examinations to bring it into harmony with the provisions of the Code. A directive concerning the new policy was sent to all employees.

* * * *

The complainant had been employed as a keypunch operator by the respondent company for eight years when she was injured in an automobile accident. She was absent from work for two months because of her injuries, after which time she was dismissed because of her absence, in accordance with the company policy. Her complaint alleged discrimination in employment because of handicap.

The respondent confirmed that employees were automatically discharged when absent because of illness or injury. Consideration was not given to making reasonable efforts to accommodate such employees. The evidence indicated a breach of the Code. In settlement, the company agreed to:

- cease the practice of dismissing employees who had been absent for medical reasons, except where it could be demonstrated that to retain such employees would cause undue hardship on the business;

- place the complainant in the next available position for which she was qualified; and

- compensate the complainant in the amount of $1,789 for earnings lost and mental anguish.

The complainant was later re-employed in a higher-paying position with the company.

* * * *

The complainant's employment as an assembler was terminated a month before his one-year probationary period expired. He alleged that the termination, as well as harassment that he had experienced from his supervisor, was based on handicap. He has a speech impediment.

The investigation disclosed that the employer had been aware of the complainant's speech impediment at the time he was hired. Company representatives provided documentary evidence that the complainant's work performance had been unsatisfactory and had not improved sufficiently after 11 months of employment to warrant giving him permanent status.

Several co-workers supported management's evaluation of the complainant's performance, noting that he frequently failed to meet production standards. A number of other assemblers had been dismissed under similar circumstances and no workers with similar employment histories had been retained in the previous one-year period, according to company records. The evidence did not support the allegations of the complaint.

The findings of the investigation were reviewed by the Commission. It was decided to dismiss the complaint, and the parties were provided with the following reasons in writing:

- The evidence indicated that the complainant was dismissed because of the inferior quantity and quality of his work as a bench and structural assembler, as well as his argumentativeness with management;

- the process of evaluating the complainant and terminating his employment was consistent with personnel practices in similar situations, and there was no evidence that the complainant's speech impediment was a factor that was considered in the decision to terminate his employment;

- moreover, when this complaint was filed, the complainant was unable to provide any particulars to support his belief that his handicap was a factor in his dismissal;

- The evidence, therefore, did not indicate discrimination or harassment on the ground of handicap.

* * * *

Race, Colour, Ethnic Origin

The complainant, a black man of Barbadian origin, had been employed by the respondent as an accountant for nine years. He had observed that white staff members received promotions despite the fact that their qualifications were equal or inferior to his own, while his applications for promotions had been unsuccessful. In 1983, when a senior manager advised him to transfer to a lower-paid job in another department, he informed the manager that he intended to file a complaint with the Commission. The next time a promotional opportunity arose, the complainant applied and was again refused. The position was filled without a competition being held. He filed a complaint alleging discrimination in employment because of race, colour and ethnic origin, and reprisal action for indicating his intention to enforce his rights under the Code.

At the Fact Finding Conference, it was disclosed that the complainant had repeatedly been bypassed for management positions despite his excellent qualifications and experience. His supervisors declared him to be a highly competent employee. However, the evidence indicated that two of the complainant's managers had made it known that they would not hire or promote black individuals. These managers attempted to make the complainant's job redundant and to force him to resign. Many of the jobs for which he applied were given to white workers without interviews being conducted. This was verified from letters sent to the successful applicants, several of whom had not been interviewed. The evidence supported the complaint.

In settlement, the employer agreed to transfer the complainant to another department, where he received a promotion, and to pay him the amount of $1,000 in compensation for mental anguish. A human rights seminar was conducted by the Commission for all managerial staff.

* * * *

The complainant, a black male, alleged that his white co-workers had made derogatory racial comments to him since he began working as a clerk in a clothing store two months previously. He made both co-workers and the store manager aware that the racial slurs were unacceptable to him, but no corrective action was taken. He resigned his position and filed a complaint alleging racial harassment.

The employer and the co-workers, who had been named as individual respondents, did not dispute the allegations at the Fact Finding Conference. The evidence had established a violation of the Code. A settlement agreement was reached as follows:

- the corporate respondent paid the complainant the amount of $3,000 in compensation for lost earnings and mental anguish. He did not request reinstatement because he had found a new job;

- the respondent agreed that the Commission would conduct a human rights seminar for its employees, and posted Code cards on the premises.

* * * *

The complainant, a black male, alleged that he had been discriminated against in the provision of services and facilities because of race and colour when security guards in a shopping mall issued him a notice banning him from the premises. He alleged that his conduct had been beyond reproach while in the mall.

Representatives of the shopping mall and security company informed the Commission during the investigation that the banning notice had been issued in error, and had been based on incorrect information. In an effort to address the public interest aspect of the complaint, the Commission reviewed a random sample of banning notices, notices of caution and charges of trespassing that had been issued by the security staff over the previous six months. The analysis revealed that a disproportionately high number of non-whites had been issued such a notice.

The evidence supported the allegations, and in settlement of the complaint, the respondent agreed to the following:

- the ban against the complainant was rescinded, and he received a letter of apology;

- the security staff participated in a two-day human rights seminar conducted by the Commission, which addressed the effects of stereotyping on race relations;

- a human rights policy was developed for members of the security staff and a directive to this effect was sent to all Ontario branches of the security company.

* * * *

The complainant, a man of Korean origin, had been employed as a sewing machine operator in the respondent company for two years when problems developed with his supervisor. Several incidents occurred when he was disciplined for conduct that went unnoticed when practised by his white co-workers. On one occasion, when a fight developed between him and a white employee, management refused to accept his claim that he had not initiated the dispute and suspended him for two days. The white co-worker was not disciplined. The complainant alleged discrimination in employment because of race, colour and ethnic origin. He also alleged harassment in the workplace because of race.

During the investigation, the Commission interviewed the complainant's co-workers and supervisors. Other employees confirmed that the supervisor had applied different standards of discipline according to race and colour, and two witnesses had overheard the supervisor using derogatory racial terms while talking to the complainant. A former black employee stated that he had resigned because of the supervisor's racially motivated conduct. The evidence confirmed the complainant's allegations.

In conciliation, the respondent agreed to compensate the complainant in the amount of $3,000 for mental anguish and to hold a human rights seminar, conducted by the Commission, for its management employees.

* * * *

Sex, Sexual Harassment

The complainant had been employed as a buyer with the respondent company for five years. She had been complimented on her work performance and had taken night courses in business administration in an effort to improve her qualifications.

She applied for two administrative positions, and was not successful. In each case, a man had been hired for the position. She alleged discrimination in employment on the ground of sex.

The investigation revealed a significant under-representation of women at the middle and senior management levels and indicated that the complainant's qualifications and experience were superior to those of the two men who had received promotions over her. The evidence tended to support the allegations.

In conciliation, the parties agreed to the following terms of settlement:

- the respondent agreed to promote the complainant to the next available position for which she was qualified;

- since the complainant's evening courses were directly related to her duties, the company agreed to reimburse her for her tuition fees upon successful completion of the program;

- the respondent introduced an affirmative action program to increase the employment of women at all levels of management.

* * * *

The complainant had worked for a financial institution as a senior clerk for seven years. For the year prior to filing her complaint, she had been assigned to a more responsible job when the incumbent, who was a male, took a leave of absence. When the incumbent decided to resign from the company, the complainant applied for the position and was refused. Another male was hired, and she was responsible for training him. Her complaint alleged discrimination in employment because of sex.

The Commission interviewed the complainant's supervisors during the investigation, and they reported that her work performance had been excellent while she held the more senior position. Personnel records indicated that her qualifications and experience were superior to those of the man who was placed in the job. The evidence indicated that the complainant had been refused the promotion because of her sex.

In settlement, the company agreed to offer the complainant the next available job for which she qualified and to notify the Commission about all such openings for a one-year period. Because the complainant had found another position, she did not request compensation for earnings lost due to discrimination. She did, however, receive $500 for mental anguish.

* * * *

The eight female complainants had been employed as assembly line workers with a large manufacturing firm for periods ranging from six months to two years. They alleged that their foreman had made repeated sexual advances towards them during the course of their employment. They further alleged that they had made it clear that these advances were unwelcome. When they objected to the foreman's conduct, he assigned to them the least desirable duties in the plant. Their complaints alleged sexual harassment and reprisal actions because they had refused the sexual advances.

The complainants had provided the Commission with the names of several co-workers who had witnessed the physical advances, as well as the names of several women who had worked for the company in the past. Many of these witnesses related similar incidents involving the foreman in question. The evidence supported the allegations.

The following settlement was reached among the parties to the complaints:

- a letter of warning was placed on the foreman's personnel file, indicating that he would be dismissed in the event of future complaints of sexual harassment;

- a directive was sent to all employees of the company, informing them of the policy against sexual harassment;

- the Commission conducted two seminars on human rights for management staff and hourly employees;

- the complainants were compensated in amounts ranging from $200 to $700 calculated on the basis of the nature of the harassment, its frequency, the length of the complainant's employment and the psychological impact of the harassment.

* * * *

The complainant had been working for several months as a filing clerk at the respondent company when a male supervisor began making physical sexual advances towards her. He also asked her intimate questions about her married life. She had told him that his behaviour was unwelcome, but the harassment continued. The complainant informed a senior manager about the problem and the behaviour ceased for two weeks, then began again. She resigned from the company and filed a complaint alleging sexual harassment.

At the Fact Finding Conference, the company's representative acknowledged that the complainant had brought the matter to his attention and admitted that he had received similar complaints about the supervisor from other female employees. The following settlement was agreed to among the parties:

- With the assistance of the Commission, the company developed and circulated a policy that opposes sexual harassment and promotes equal employment opportunity;

- the complainant received the sum of $2,500 in compensation for lost earnings and mental anguish.

Creed, Age

The complainant, whose Baptist religion prohibited her from working on Sunday, alleged that her employer required her to work on a Saturday and Sunday for the purposes of taking inventory. She alleged that the personnel manager had told her at the time of hire that weekend work would not be required. When she informed her supervisor that she would be unable to report for duty on the Sunday, she was dismissed.

The parties did not disagree with respect to the issues during the Fact Finding Conference, and they explored the possibility of accommodating the employee's religious practices short of undue hardship. It was concluded that arrangements could have been made to allow the complainant to exchange the Sunday duty with a co-worker since inventory was taken only once a year.

The complainant had been hired on contract, which expired two weeks after the alleged discrimination. The settlement included compensation in the amount of $600, representing lost earnings for the two-week period, and a directive from management to all employees setting out the obligation to accommodate the religious observances of staff unless to do so would cause undue hardship. Code cards were displayed on company premises.

* * * *

The complainant was a member of a religion that prohibited women from wearing slacks while working. She had been hired as a packer, and the employer maintained that wearing pants was mandatory for safety reasons. When the complainant was told that she would be dismissed if she did not dress according to company policy, she demonstrated her ability to operate the equipment safely and efficiently while wearing a skirt. The respondent would not withdraw his objections. The woman filed a complaint alleging discrimination in employment because of creed.

An independent safety expert observed the complainant performing the job duties while wearing a skirt and stated that her clothing did not restrict her movements and posed no risk to herself or other workers. The evidence tended to confirm the allegations.

The parties agreed on the following settlement:

- the complainant would be rehired provided that she wore a skirt and footwear that allowed ease of movement;

- the respondent would compensate the complainant in the amount of $3,000 representing lost earnings and mental anguish;

- the company issued a memorandum to all staff setting out its policy of non-discrimination.

* * * *

The complainant's employment had been terminated because he had refused to report for work on Saturday. As a Seventh Day Adventist, he was forbidden by his religion to work on the sabbath, which lasts from sundown on Friday to sundown on Saturday. He alleged discrimination in employment because of creed.

The investigation disclosed evidence in support of the allegations, and also revealed that the complainant's religious beliefs could have been accommodated by exchanging shifts with other workers. In settlement, the company agreed to reinstate the complainant with no loss of seniority, to accommodate his religious practices and to compensate him in the amount of $1,923 representing lost earnings and mental anguish.

* * * *

A 52-year old woman applied by telephone for a job as a waitress in response to a newspaper advertisement. She alleged that she was invited for an interview, but when she arrived at the restaurant, the owner asked her age and indicated that he had "a very young staff." The woman telephoned the Commission to complain of discrimination in employment because of age. Because the job was still available, she agreed that her case should be dealt with by the priority case handling method.

The Commission contacted the owner of the restaurant and explained the provisions of the Code. The owner apologized for asking the question about age and stated he was merely concerned that a new employee be able to "fit in." He agreed to interview the complainant on an equal basis with other job applicants. The complainant was interviewed and received an apology from the respondent. She informed the Commission that she was satisfied with the outcome of the complaint. She later accepted another position for which she had applied, because it offered better wages. Both parties received a letter from the Commission confirming the settlement.

* * * *

ACCOMMODATION, GOODS, SERVICES AND FACILITIES

Race, Colour, Ethnic Origin, Handicap, Family Status, Receipt of Public Assistance

A black woman had telephoned in response to a newspaper advertisement for a cottage, and requested the opportunity to view it. Arrangements were made for her to visit the cottage the next day. When the owner answered the door, she told the complainant that the cottage had been sold that morning and she had been unable to contact the woman to cancel the appointment. Several days later, the complainant noticed that the advertisement was still in the paper and she asked a male friend to telephone the vendor. He was told that the cottage was still available. Her complaint alleged discrimination with respect to accommodation because of race and colour.

At the Fact Finding Conference the owner admitted that they had refused the complainant because she was black and said the neighbours would object if a black family were to move in. The parties agreed to settle the complaint on the basis of

$2,000 in compensation for insult to the complainant's dignity. Because she had obtained suitable housing elsewhere, she did not request compensation for out-of-pocket expenses.

* * * *

An East Indian woman had telephoned to inquire about an apartment that had been advertised in the newspaper. She was told by the superintendent that it had already been rented. She became suspicious and asked a friend without a foreign accent to telephone the number advertised. The friend was given an appointment to view the apartment. The complainant alleged discrimination in accommodation because of race, colour, ethnic origin and place of origin.

The apartment was still available, and the matter was dealt with by the priority case handling method. The Commission contacted the building manager and related the complainant's allegations. The manager stated that he had a non-discriminatory rental policy and offered to show the complainant another apartment, located on a higher floor, that had a better view than the original accommodation. She accepted the apartment, and the settlement was confirmed in writing.

* * * *

The complainant, who received Mother's Allowance benefits, alleged that she had been denied rental of an apartment because the building manager "did not want a building that was full of welfare recipients." She had already been told on the telephone that several units were available on the date that she planned to move. She filed a complaint alleging discrimination with respect to accommodation because of receipt of public assistance.

The matter was dealt with through priority case handling. The building manager informed the Commission that there were a number of tenants who received social assistance, but the owner of the building had instructed that their numbers be kept low. When the provisions of the Code were explained to him, he agreed to accept the complainant's application and to rent her an apartment. He also agreed to post Code cards in public areas of all rental buildings owned by the corporate respondent. The settlement was confirmed in writing.

* * * *

The complainant, a woman with cerebral palsy, alleged that she was denied life insurance because of handicap. The insurance policy had been refused despite the fact that her physician had advised that her condition did not affect her life expectancy in any way.

At the Fact Finding Conference, a representative of the respondent insurance company confirmed that the insurance policy had been denied on medical grounds and in the absence of any evidence that the complainant's condition placed her at risk. In settlement, the respondent offered to provide the complainant with the $50,000 life insurance coverage she had applied for and to write her a letter of apology as well as

to issue to all employees a declaration of its non-discriminatory policy. This offer was accepted, and the case was settled.

* * * *

The complainant alleged that a public housing authority had denied her the right to apply for subsidized housing accommodation because her father had died without paying several months of back rent owing on an apartment he was renting from the same housing authority. Although the complainant had lived with her father in his apartment for a period of time in the past, she was not a tenant of record. She contacted the Commission and her complaint was dealt with by priority case handling.

The Commission explained that discrimination against an individual based on the conduct of that person's father constituted discrimination on the basis of family status. This ground is defined in the Code as "the status of being in a parent and child relationship." Upon being advised of the provisions of the Code, the respondent agreed to accept the complainant's application. The settlement was confirmed in writing.

* * * *

EMPLOYMENT

Sex, Sexual Harassment

Bishop and Hardy

Ms. Bishop was employed as a trainee in Mr. Hardy's furniture refinishing workshop. She alleged that she usually worked until 10:00 p.m. and that Mr. Hardy normally drove her home. Occasionally, they would have a drink together on the business premises after work.

In her testimony at the hearing, Ms. Bishop stated that Mr. Hardy told her that he wanted a person in his shop whom he could trust, and she could be that person if she went to bed with him. When she rejected this overture, he informed her that she would have to go to bed with him if she wanted to keep her job. She again rejected this solicitation and he told her she was fired.

Ms. Bishop further testified that she told her roommate about the encounter that evening. On her roommate's advice, she then applied for public assistance and told the social services caseworker that she had lost her job because she had been sexually harassed.

The respondent denied the allegations, but in the view of the board, his evidence to counter the complainant's story was very limited. The chairman of the board of inquiry went on to state that the testimony of Ms. Bishop and her subsequent conduct, as verified by her roommate and the social services caseworker, were consistent with her complaint that Mr. Hardy had requested sexual favours as a condition of keeping her job.

Having found discrimination contrary to the Code, the board ordered the respondent to compensate the complainant in the amount of $395 representing lost wages and $1,500 in general damages for mental anguish. The Commission also asked for an order that Mr. Hardy's hiring practices and conduct with respect to female employees be monitored by the Commission in order to ensure compliance with the Code. The board ordered that, for two years, Mr. Hardy be required to inform the Commission in writing whenever a female employee leaves his employment and that he furnish her name and address, the period of employment and her employment record, including reasons for termination.

Cuff and Gypsy Restaurant, Abi-ad

The complainant, Ms. Cuff, alleged that Mr. Abi-ad, her employer and the operator of Gypsy Restaurant, had discriminated against her with respect to employment and harassed her because of her sex. She further alleged that her employer carried out a reprisal against her by terminating her employment for refusing his advances.

The complainant testified that her employer frequently made comments with sexual overtones about female passers-by and made offensive remarks directly to her about sexual activities. She further stated that he touched and rubbed her body despite the fact that she told him this conduct was unwelcome. In addition, the employer requested sexual favours of her, and said "that's how black people make their living, by doing blow jobs."

Mr. Abi-ad denied the allegations in his testimony and claimed that several of his employees, customers and applicants for employment had offered to have sexual relations with him. He made a number of derogatory references to the complainant's race and colour while giving testimony during the hearing. He stated that he had dismissed the complainant because of problems with her work performance.

However, the board found the comments relating to alleged incompetence on the part of the complainant to be inconsistent with the fact that the employer had steadily increased her hours over the period of her employment and had taken her back following a month-long illness. The board also accepted the similar fact evidence that was provided in support of the allegations by several former employees.

Having found that discrimination contrary to the Code had occurred, the board ordered the respondent to pay to the complainant the sum of $325.04, representing lost earnings and interest, and $2,000 in compensation for mental anguish caused by the discriminatory act. He was further ordered to send a letter of apology to the complainant and to amend her Record of Employment to reflect the true reasons for terminating her employment as indicated in the board's decision.

Davey and the Canadian Union of Public Employees, Local 16, Sault Ste. Marie Board of Education et al

Mrs. Davey, who was a cleaner with the respondent Board of Education at the time she filed her complaint, alleged that the school board discriminated against her in employment because of sex, in that cleaners, who were all female, were treated differently from caretakers, who were predominantly males. She alleged that, although the two positions involved similar duties, the caretakers were in a more favourable position regarding hours of work, seniority and receipt of responsibility pay. She also alleged that she and other cleaners were not given an equal opportunity to apply for the caretaker positions.

A board of inquiry had been appointed to decide the complaint, but the parties reached a mutually satisfactory settlement prior to the hearing.

The settlement between Mrs. Davey and the union provided as follows:

- the union paid $1,000 to Mrs. Davey and wrote her a letter acknowledging the problems that had existed;

- Mrs. Davey was offered the next available position as head caretaker at either Eastview Public School, Bayview Public School or Ben R. McMullan Public School;

- the union and Local 16 agreed to implement an affirmative action program, which includes assistance to female cleaners who wish to prepare for the positions of custodian, assistant head caretaker or head caretaker in an elementary school; training for the positions of custodian or caretaker and promotional opportunities for these positions.

The following settlement was reached between Mrs. Davey and the respondent board of education:

- the board paid $13,000 to Mrs. Davey and wrote her a letter of apology;

- the board agreed to employ a person in the position of Employment Equity Officer for a one-year period to deal appropriately with human rights issues as they may occur;

- Mrs. Davey received the next available position as head caretaker at one of the three aforementioned public schools;

- the board agreed to implement the affirmative action program referred to above.

The terms of settlement were implemented by consent order of the board of inquiry.

Geiger, Barboutsis and London Monenco Consultants Ltd., Roger

The board of inquiry decided the complaints that had been filed by two single male employees of the respondent. They had been assigned by the respondent company to the Ontario Hydro Generating Station at Atikokan. The terms and conditions of employment provided a differential living allowance ($850 per month for married employees; $350 per month for single employees) for employees who elect not to reside at the Atikokan camp site; and a company-paid return trip to home base every three weeks for married employees, which was not provided to single employees.

The complainants and Commission submitted that both of these provisions were a denial of equal treatment with respect to employment because they discriminate on the basis of marital status.

The company argued that the differential treatment was a reasonable and bona fide qualification because of the nature of the employment at Atikokan and, therefore, the policy fell within the exception to the provisions of the Code that is set out in section 23(b).

The board found that the differential relocation allowance, while clearly discriminatory, was not in contravention of the Code since it is considerably more expensive to relocate a family than it is for a single employee without dependents to move to a remote job site.

With respect to the provision of company-paid trips to home base for married employees, the board supported the position taken by the company and declared that

the provision of flights home for married employees was honestly imposed, in good faith, and in the sincerely-held belief that it was necessary to induce the married, more senior company personnel, to move to the remote Atikokan job site. It was provided in the interest of adequate performance of London Monenco's subcontracting obligations to Ontario Hydro. The board therefore ruled that the benefit was objectively related to the employment and was reasonably necessary to the discharge by the respondent of its subcontractor's obligations in an efficient and economical way.

Accordingly, the complaints were dismissed. The Commission is appealing the decision to the Divisional Court of the Supreme Court of Ontario.

McMinn, Bourgeois, Brooks and the Sault Ste. Marie Firefighters Association Local 529, McDermott

The three female complainants were clerical workers with the Fire Department and had become members of the respondent union in 1979. They alleged that they had been denied promotions and benefits because they were improperly placed on the seniority list because of their sex. They filed their complaints against the union under sections 5, 8 and 10 of the Code in 1982 after numerous attempts to file grievances with the union over seniority lists posted in 1981 and 1982.

The parties negotiated a settlement of the complaints on the second day of the board hearing. The union agreed to revise the seniority list and to post the complainants on it properly. It was also agreed that the union would explain the settlement in detail at its next general membership meeting. For their part, the complainants agreed not to pursue any further complaints or grievances regarding the seniority lists or other issues raised in their complaints.

The chairman of the board of inquiry endorsed the settlement and ordered the union to amend the seniority lists.

Pattison and the Board of Commissioners of Police for the Town of Fort Frances, Solomon, Murray

Ms. Pattison, who was a constable for the respondent police force, alleged that she had been discriminated against in her employment because of sex. The complaint arose out of two pregnancies and alleged discrimination during two time periods: January 12 to June 30, 1985 and January 22 to July 7, 1986. The allegations were as follows:

- there was constructive discrimination within the meaning of section 10 of the Code by the requirements of the respondents that, during her pregnancy, she perform regular police duties and that she wear her issued uniform and gunbelt despite the fact that they no longer fitted her;

- there was direct discrimination within the meaning of the Code because the limited job duties that would have satisfied the employer's requirements to make reasonable efforts to accommodate Ms. Pattison had

been denied her despite being provided for male police officers who were disabled;

- there was also direct discrimination within the meaning of the Code because sick leave in the context of the prevailing collective agreement between the union and the force had been granted to male constables who were temporarily disabled, and it had been denied Ms. Pattison.

In her testimony at the board of inquiry, Ms. Pattison stated that she had informed her employer that her physician said she should not be exposed to any potentially violent or physically demanding situation. She therefore requested that she be assigned to alternative duties, and pointed to situations where male officers were given restricted duties following an injury or other form of incapacitation. Ms. Pattison also stated that she was unable to wear her uniform because it was too tight, and that her doctor had advised her not to wear a gunbelt. Counsel for the Commission argued that the regulations of the Police Force allowed both for restricted duties and a variation in the kind of uniform that might be worn, if the chief so ordered. However, the complainant was advised that she would not be paid unless she was in uniform and that she would be expected to undertake the regular duties of a constable.

With respect to these aspects of the complaint, the board found that Ms. Pattison was not incapacitated from performing the job of regular patrol because of her pregnancy at the time she made the request, that is, within the first three to four months of that pregnancy. Moreover, it was the board's opinion that the only available alternative position in which the complainant could have been placed in the later stages of her pregnancy was that of clerk-typist. The board rejected the Commission's argument that Ms. Pattison could, and should, have been placed in one of several other positions on the force. The board further concluded that simple modifications could have been made to her uniform during the early stages of her prgnancy by moving several buttons.

Because the complainant refused to continue wearing the uniform and to assume normal patrol duties, she was placed on an unpaid leave of absence. As a member of the force she could not take other employment without the permission of the chief; her request for such permission was denied.

The board dismissed the allegations relating to a violation of sections 4 and 10 of the Code and held that the complainant's pregnancy in no way prohibited her from carrying out the orders relating to uniform, gunbelt and patrol duty at the time these orders were given. The board found, however, that although there was alternative work available from time to time as a clerk-typist, which was offered to male constables on a regular basis, the complainant was never given the opportunity to assume this position.

The board then addressed the allegations arising out of the complainant's second pregnancy. She had requested an extension of her leave of absence for approximately three months. The additional leave was granted, but Ms. Pattison was informed that she would be sent to an advanced training course at the Ontario Police College upon her return from the leave of absence in order to acclimate her to police work in light of the considerable period of time she had been off duty.

Shortly after the extended leave commenced, the complainant became pregnant. Upon being informed of this, the Chief of Police testified, he requested the Police

College to make special arrangements for Ms. Pattison and her baby, including housing accommodation off campus and limited physical activity during the course. The evidence indicated, however, that this arrangement was not satisfactory to Ms. Pattison, who declined to go on the training course and requested light duties. She subsequently took sick leave and later began her maternity leave. On September 7, 1986, she resigned from the force.

The board concluded that the respondents had made reasonable efforts to accommodate the complainant during her second pregnancy, and dismissed this aspect of the complaint.

In upholding the allegations relating to the respondent's failure to offer Ms. Pattison alternative work as a clerk-typist, the board ordered that the complainant be awarded special damages based on the following criteria:

- from the time of the complainant's January 1985 leave of absence she was entitled to substitute for absent clerk-typists in lieu of those constables who performed such work on an overtime basis. In this regard, she is to be paid at her then prevailing rate as a constable;

- where one absent clerk-typist shift followed another and overtime would have been required, Ms. Pattison was entitled to share in that overtime on the same basis as other constables;

- The computation of damages for Ms. Pattison is to end as of May 1985, when she became ill.

The Commission is appealing to the Divisional Court of the Supreme Court of Ontario that portion of the decision dismissing the allegations made with respect to the complainant's first pregnancy.

Ponte and Hurontario Travel, King

The complainant, a male, responded by telephone to an advertisement for a travel counsellor with the respondent company in 1981 and was informed that the job was for women only. He alleged discrimination in employment on the basis of sex.

The complainant testified that when he inquired about the position, the respondent told him that uniforms were required in the office, and since they were designed for women they would not look good on him. He was denied an interview.

At the suggestion of a Human Rights Officer, the complainant arranged for two of his friends, one male and one female, to place calls to the respondent claiming the same qualifications as the complainant. They were instructed to record the precise response.

When the man called, the respondent asked if he had typing and other related skills. He answered positively. Once again, the respondent stated the job was only available to a girl and that "the skirt would not look good on him."

Thirty minutes later, the woman called and was granted an interview. It was only when she called back two days later to cancel the interview that she was asked, at the end of the conversation, whether she had any experience in the field.

The board held that, based on the facts presented, the granting of an interview to the woman while denying one to the complainant without any relevant distinguishing factors constituted a violation of the Code.

The board ordered the respondent:

- to pay to the complainant the sum of $750;
- to attend a one-day training session to be provided by the Commission to review the employment practices and procedures as prescribed by the Code.

Whitehead and Servodyne Canada Ltd., Dooling

Ms. Whitehead had worked at the respondent company from 1975 until her dismissal in 1983. She alleged that a new general manager to whom she reported was hired in 1981. Soon thereafter, a co-worker informed her that her new boss had indicated that he wanted to get rid of her. She further alleged that she was denied a promotion to the position of plant manager for which she was qualified and was eventually dismissed because of her sex.

There was no evidence before the board of inquiry that the complainant had been dismissed for cause. Indeed, the only evidence available suggested that she was a competent, hard-working and loyal employee who was dismissed as a result of the arbitrary decision of the general manager.

At issue was whether her dismissal was related to sex and therefore in breach of the Code. The board heard the testimony of an office employee, who stated that the general manager had never interviewed a woman for the position of plant manager in which Ms. Whitehead had expressed an interest. Another witness stated that the general manager had dwelt upon the fact that she was a woman. "As far as he was concerned, women were meant for bearing children and not much else." The board found that this evidence was sufficient to establish a violation of the Code and that the corporate and individual respondents were jointly and severally liable to compensate the complainant in the amount of $24,240 representing wages lost because of discrimination, $2,500 in general damages and $7,642 representing interest.

Age, Nationality, Race, Colour, Handicap

Armbro Holdings Ltd. and Ontario Human Rights Commission

Mr. Rossignol had filed a complaint with the Commission alleging that the termination of his employment by Armbro Holdings Ltd. had involved discrimination on the ground of age.

Prior to filing his complaint with the Commission, Mr. Rossignol commenced a civil action against Armbro Holdings Ltd. for damages for wrongful dismissal. The Company brought an application for judicial review, seeking an order from the Supreme Court of Ontario prohibiting the Commission from continuing with its investigation of Mr. Rossignol's complaint. Armbro Holdings argued that the Commission had no jurisdiction to investigate the complaint when, substantially, the same issues were the subject of the civil action in the Supreme Court.

The Court decided that it would not be a proper exercise of its discretion if it were to make an order prohibiting the Commission from continuing with its investigation because the legislature has given primary, and, in many respects, exclusive, jurisdiction to the Commission subject to very wide rights of appeal. The application was therefore dismissed.

Hope, Karr and the Corporation of the City of St. Catharines, Professional Firefighters' Association, Local 485
Whitney and the Corporation of the City of St. Catharines
Boatman and the City of Waterloo, Waterloo Fire Department
Callen and the Corporation of the City of Windsor, International Association of Firefighters, Local 455

These complaints, which were combined and dealt with in the same proceeding, alleged that the mandatory retirement of firefighters at the age of 60 is discriminatory and in violation of the right to freedom from discrimination in employment on the basis of age.

The respondent employers and unions argued as their defence that age 60 is a bona fide occupational qualification for the job. The board of inquiry stated that the Supreme Court of Canada has indicated that employers who wish to rely on this defence must prove it on the basis of statistical and medical evidence relating to the effect of aging on the capacity of firefighters to perform their duties.

According to this precedent, the board stated, the respondents must demonstrate that mandatory retirement must be imposed honestly and in good faith and be related in an objective sense to job performance. That is, the qualification must be reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his or her fellow employees or the public.

Considerable evidence was introduced by the respondents with respect to the particular responsibilities of the complainants, the conditions under which these tasks are performed and the effect of aging on physical fitness, vulnerability to heart disease and on a broad range of physical and mental capacities said to be related to the successful performance of the job.

The board was persuaded that each complainant was required, as a routine duty, to engage in active firefighting since jobs at all levels in the respondent organizations included firefighting duties. The board found that because the nature of the work is physically demanding and very stressful, the employers' requirements of the necessary levels of physical fitness and mental acuity are reasonably necessary.

The board stated that the employer had successfully established mandatory retirement at age 60 as a bona fide occupational qualification. A certain minimum level of physical fitness, which can be assessed by measuring aerobic capacity, is a necessary requirement of the job. All, or almost all, individuals aged 60 would not possess an aerobic capacity at this level. The board ruled that the evidence also established that there are no methods of testing either aerobic capacity or propensity for heart disease that are sufficiently accurate and safe that they can be imposed upon the respondents as a substitute for their compulsory retirement policy. The complaints were dismissed.

Karumanchiri, Ng, Yan and the Liquor Control Board of Ontario, Bosworth, Couillard, Parker

Mr. Karumanchiri, who is of East Indian origin, and Dr. Ng and Mr. Yan, who are of Chinese origin, are employed as senior laboratory technicians by the LCBO. They alleged that they had been denied promotions to the positions of assistant chief chemist and chief chemist, which was later designated as director of laboratory services, in favour of a lesser-qualified white employee. These complaints involved access by visible minorities to senior management positions, none of which are held by members of racial minorities.

Dr. Ng and Mr. Yan further alleged that their employer had taken reprisals against them because they had filed complaints under the Code.

The board first addressed two preliminary arguments put forward by the respondents with respect to section 10 of the Code, which deals with constructive discrimination.

The first argument was that there can be no constructive discrimination because the complainants are not members of a visible minority in their positions as laboratory technicians. Evidence was led that four of the nine technicians are of Indian, South-East Asian or Chinese descent. The board accepted that evidence, but found that the issue was access, by visible minorities who are technicians, to senior management positions, which have, allegedly, been denied them on prohibited grounds - not the employment of technicians. The board stated that the senior management positions in question are not held by visible minorities.

The second argument advanced by the respondents with respect to constructive discrimination was that the Commission does not have the power to review, generally, promotion decisions whenever a visible minority is affected, but must show a relationship between the promotion process and a prohibited ground under the Code.

The board accepted in principle the second argument put forward by the respondents. The board stated that the Commission must show that there is a group of individuals entitled to the protection of the Code and that the actions of the respondents resulted in discrimination on a prohibited ground under the Code. It is then open to the respondents to demonstrate that the requirements being challenged serve a bona fide business purpose. If the respondents satisfy that burden, the Commission may counter by showing that the bona fide purpose was pretextual and thus the requirements do not serve a bona fide business purpose.

The board heard considerable evidence regarding the educational and work backgrounds both of the complainants and of Mr. Parker, who held the contested positions. With respect to the competition for the assistant chief chemist position, the board found that "the facts are absolutely beyond question that Dr. Ng at the time of hiring possessed a deep educational background and work experience that placed him technically and in terms of conceptual capacity in a superior position to Mr. Parker."

Among the criteria employed in the selection process for the promotions in question was the assessment given to the candidate in his employee evaluations. The board was provided with an analysis of the evaluations of the complainants and Mr. Parker that were conducted from 1968 to 1978, at which time Mr. Karumanchiri and Mr. Parker were in the same category (initially, Mr. Karumanchiri had been rated a laboratory technician 5 and Mr. Parker, a laboratory technician 3). The board was of the view that the evaluations did not reflect the complexity and variety of work

performed by Mr. Karumanchiri and, significantly, tended to overstate the range of work done by Mr. Parker. The board concluded that the 1978 evaluation of Mr. Parker, which had been made close to the time of competition for assistant chief chemist, was in error when it referred to his administrative capabilities. Moreover, it was in error when special mention was made of Mr. Parker's seniority. In none of the previous evaluations made of the candidates for the promotion had seniority ever been mentioned as even a factor to be considered for promotion, pay increase or assignment of duties, the board stated. The board chairman advanced an explanation for the reference to seniority: "By the end of the 10-year period from 1968 to 1978, the former chief chemist was able to bring Mr. Parker to the same classification and similar salary as Mr. Karumanchiri by means of an inflated job description. Seniority, a factor never introduced by the former chief chemist in evaluating laboratory technicians, was raised at a time when Mr. Parker and Mr. Karumanchiri, at least on paper, appeared to be performing jobs of equal quality."

Moreover, the board found that the required experience that was set out in the position description mirrored the experience of Mr. Parker as set out in his evaluations, to the exclusion of Mr. Karumanchiri.

The board was of the opinion that Mr. Couillard, a senior management official who was cited as a respondent, attempted to dissuade Mr. Karumanchiri from aspiring to the position of chief chemist. "For reasons that do not have a basis in good faith or reasonable business decisions, Mr. Couillard apparently had determined to engage in subterfuge in his dealings with Mr. Karumanchiri," the board stated. Mr. Parker had been earmarked to become the next chief chemist.

When the chief chemist retired, Mr. Parker was promoted to the position without a competition being held. The board stated that this decision was "redolent with deception and false representations that had the purpose and effect of stopping three qualified chemists, members of a visible minority, from competing for that position."

The board then addressed the two reprisal complaints. Dr. Ng and Mr. Yan had alleged that Mr. Parker transferred them from the work to which they had previously been assigned because they had filed complaints with the Commission. The board found that this action was a reprisal within the meaning of the Code, and had the effect of assigning to the two complainants work of lesser responsibility.

The board found that the rights of the complainants under sections 4, 8 and 10 of the Code had been violated by the respondents, and made the following order:

- within 45 working days from the date of the award, Mr. Karumanchiri is to be appointed director of laboratory services at the LCBO;

- Mr. Karumanchiri shall be paid the difference in salary between what he earned and what Mr. Parker earned from April 1, 1979 to the date that Mr. Karumanchiri begins to function as the director of laboratory services, with interest on this amount;

- general damages in the amount of $6,000 shall be paid by the LCBO to Mr. Karumanchiri;

- the LCBO was directed to pay the legal expenses of the complainants on a party and party basis;

- general damages in the amount of $3,000 shall be paid by the LCBO to Dr. Ng, and $1,500 to Mr. Yan. The above damages relate to the contraventions of the employment provisions of the Code;

- general damages in the amount of $1,000 each shall be paid to Dr. Ng and Mr. Yan in respect of the contraventions of the reprisal provisions of the Code.

Mr. Parker and the LCBO are appealing the decision and order to the Divisional Court of the Supreme Court of Ontario, and have filed an application for judicial review.

The Canadian Corps of Commissionaires (Toronto and Region) and Barnard, Ontario Human Rights Commission

Mr. Barnard, a man of East Indian origin, was a permanent resident but not yet a citizen of Canada at the time of his complaint. He had served with distinction in the Indian army during World War II. He alleged that the Canadian Corps of Commissionaires had refused his application for membership because he was not a Canadian citizen or a British subject, in accordance with its membership requirements at the time. A board of inquiry held that the corps had discriminated against Mr. Barnard with respect to employment on the ground of nationality.

The respondent appealed the decision in the Supreme Court of Ontario, Divisional Court. The Court dismissed the appeal and rejected the respondent's argument that the relationship between a commissionaire and the corps is not one of employment, but rather membership in a fraternal organization. The Court ruled that the corps had committed a breach of the Code, stating that:

> "One of the main functions of the corps is to make contracts with organizations to provide what I shall describe as a security service for such organizations. There can be no real doubt, in our view, when the corps makes a contract with an organization to provide services to that organization and then assigns members of the corps to perform those services, the corps is the employer of the members performing services for the corps' client. This relationship is recognized in the rules of the corps, which state: A commissionaire assigned to duty ... is an employee of the corps and will be paid by the corps."

The Court also disagreed with the respondent's argument that the exclusion of persons who were not Canadian citizens was justified on the ground that the procedures for acquiring citizenship provide some screening of newcomers to this country, and that such screening is appropriate in view of the nature of the security work performed under the contracts entered into by the corps. The Court quoted the decision of the board of inquiry in rejecting this position:

> "Citizenship does not assure the corps that the applicant is knowledgeable about the institutions where he will be working or that he is honest or loyal or industrious or not a security risk. The corps could try to ensure these attributes in other ways."

Boehm and National System of Baking, Ltd., Heagle, Pettifer, Woods

The complainant, Mr. Boehm, alleged that a new supervisor, Mr. Woods, discriminated against him by harassing him in the workplace because of his handicap, and ultimately rendered it unreasonable for him to continue work under such conditions. Mr. Boehm has a condition of mental retardation or impairment or a learning disability. Mr. Boehm also asserted that, if Mr. Woods was found to have acted in violation of the Code, the company is responsible at law for his behaviour.

This board of inquiry was the first in any jurisdiction to deal with the issue of harassment in the workplace because of handicap.

The evidence indicated that Mr. Boehm had worked for over a year at the bakery without any problems prior to Mr. Woods' arrival at the company. According to the witnesses, Mr. Boehm was an eager, willing and very good employee.

The complainant testified that Mr. Woods would deliberately confuse him in assigning work tasks, often yelled at him and told him he needed "a kick in the ass." On one occasion, a customer returned a pie because no sugar had been added to the filling, the result of an oversight on the part of Mr. Boehm. He testified that Mr. Woods called him a "retard" and a "dummy" and ordered him to eat the entire pie because it was the only way "people like these" would understand. This testimony was corroborated by co-workers and management employees. Mr. Boehm's mother complained to the company's general manager about this incident.

Mr. Woods generally denied all of the complainant's allegations and testified that Mr. Boehm gave him Christmas gifts and never complained.

Mr. Boehm's mother described the events of a day on which Mr. Boehm had returned home from work ill and upset. He visited his doctor, who testified that Mr. Boehm was extremely upset, and evidenced fear and anxiety about his work. Mrs. Boehm further stated that from the time Mr. Woods became her son's supervisor, Mr. Boehm would often come home upset, was often nervous and had begun to lose the self-confidence in his ability that had been painstakingly built up over time. It was in response to these pressures that Mr. Boehm subsequently quit his job.

Evidence introduced by the company indicated that the employer offered Mr. Boehm his job back. However, the board of inquiry stated, Mr. Boehm just could not face Mr. Woods again.

The board accepted the evidence of Mr. Boehm as to the incidents of harassment and the testimony of his family about its effects. Moreover, the complainant's testimony was generally corroborated by the testimony of other workers. Mr. Woods' actions were plainly sufficient to manifest a course of vexatious comment and conduct, in the view of the board chairman, who stated that Mr. Woods would not, and did not, treat non-handicapped employees in the harassing manner that he treated Mr. Boehm. "He was treated as inferior, as someone who did not deserve the same respect as the so-called normal employee."

The board further stated that although Mr. Woods did not intend or realize the catastrophic impact of his vexatious comments and conduct upon the complainant, knowing and intending that such actions would hurt, he must bear responsibility for all the consequences that ensued.

There was testimony to the effect that some of the incidents were legitimate forms of disciplinary actions by a supervisor. However, the board stated that there was no

evidence to suggest that there was any justification for Mr. Woods' behaviour, and found that the complainant's condition of mental impairment was at least a proximate cause of the intensity and quality of the respondent's behaviour and was the sole reason for many of the derisive comments made by Mr. Woods.

In addition to finding that Mr. Woods had contravened subsection 4(2) of the Code in his treatment of Mr. Boehm, the board found National in contravention of the Code on the organic theory of corporate responsibility. This theory states that a corporate employer is personally liable for the acts of an employee where that employee is part of the "directing mind" of the corporate employer.

Having found discrimination contrary to the Code, the board ordered the respondents jointly and severally liable to pay to the complainant the sum of $340 as damages for lost wages, $3,000 as general damages for mental anguish and $549 as interest.

ACCOMMODATION

Race, Colour, Ethnic origin, Receipt of Public Assistance, Marital Status

Stevens and Salamat Investments, Felix, Jethwani

Mrs. Stevens, who is black, alleged that she and her husband were required to pay a higher deposit and rental for the party room in their apartment building than white tenants and were subjected to derogatory and sterotypical comments about black people by the superintendent of the building when they applied to rent the room. The Stevenses were also quoted a higher rental fee and deposit when they approached the landlord about the matter. Her complaint alleged discrimination with respect to accommodation because of race and colour.

When conciliation efforts failed to achieve a settlement, the Commission requested the minister to appoint a board of inquiry in the case. However, the parties reached a mutually satisfactory settlement on the day the hearing convened, and the chairman of the board of inquiry concluded the proceedings on the basis of the following agreement:

- the respondent will compensate Mr. and Mrs. Stevens in the amount of $1,000 representing general damages;

- the respondent will provide written assurances to the Commission of its policy to comply with the provisions of the Code and will post Code cards in its apartment building.

West End Construction, Ltd., Scott and the Ontario Human Rights Commission, Tabar, Lee, Lee

This case concerned an appeal by West End Construction from the decision of a board of inquiry that found that the company had discriminated against Mr. and Mrs. Lee and Mr. Tabar in the rental and occupancy of commercial space because of race, colour, ancestry and place of origin. The board had ordered that a total of $48,424 in damages be paid to the three complainants.

The Divisional Court of the Supreme Court of Ontario allowed the appeal in part, and the order of the board of inquiry was varied by setting aside the $14,326 that had been awarded to Mr. Tabar. Otherwise, the appeal was dismissed.

In its decision, the Court ruled that Mr. Tabar's complaint could not succeed because the facts on which his complaint was based occurred more than two years before the complaint was filed, in violation of the Limitations Act, which sets a two-year limitation period.

Despite the fact that Mr. Tabar's complaint was filed under the former Human Rights Code, which did not contain a limitation period, the Court held that complaints under the Code are subject to the Limitations Act. The Court further ruled that the limitation period commences to run at the time the alleged discriminatory act takes place and ceases to run when the complaint is filed. (The current Code sets out a six-month limitation period unless the Commission is satisfied that the delay in filing was incurred in good faith and no substantial prejudice would result to any person affected by the delay.)

The Commission is appealing the decision to the Ontario Court of Appeal.

Willis and David Anthony Phillips Properties, Phillips, Phillips

Ms. Willis alleged that the respondents had refused to rent an apartment to her because she was receiving public assistance. In her testimony before the board of inquiry, she described the events that followed her application for an apartment in response to a newspaper advertisement. She stated that she completed an application form, which included a question about the amount and source of her income, and gave Mrs. Phillips one month's rent. She further testified that Mrs. Phillips told her that the apartment was available on August 15, and that she could have it if she paid a second month's rent on or before that date. Ms. Willis was given permission to clean the apartment on the weekend of August 11 and 12.

The complainant further testified that she and her mother, from whom she had borrowed money to pay the second month's rent, went to the respondent's office on August 15 to pay the rent and finalize the rental agreement. Mr. Phillips, who was alone in the office, informed her that he would not rent the apartment to someone on mother's allowance or welfare.

Ms. Willis stated that she went to the apartment on August 15, prepared to move in her belongings, on the advice of her lawyer. However, Mr. Phillips was on the premises and refused her entry.

This evidence was supported by the testimony of Ms. Willis' mother and the friends who helped her to clean the apartment.

Mr. and Mrs. Phillips denied the allegations and testified that 80 per cent of their tenants were in receipt of some form of public assistance. They also stated that they followed a strict policy of requiring the payment of two months' rent in advance before an application is accepted. Mrs. Phillips denied any suggestion that she had told Ms. Willis that the apartment would be held for her until August 15, and could not remember Ms. Willis requesting permission to clean the apartment.

Mr. Phillips' account of the conversation between himself and Ms. Willis on August 15 differed substantially from the accounts given by Ms. Willis and her mother. He

claimed that Ms. Willis had made up a story about not having the second month's rent and wanted to make a deal with him. During his testimony, he asserted his low regard for many welfare and mother's allowance recipients by referring to Ms. Willis and saying that he had "seen people like her give their children away."

The board chairman noted that the case essentially involved a question of credibility. At issue was whether Ms. Willis was refused the apartment because she was in receipt of public assistance or because she had failed to pay the second month's rent.

The board reviewed the evidence provided and stated that the respondents' assertions that most of their tenants received public assistance and that they followed a policy of renting to any tenant who pays two months' rent in advance, were uncontroverted. However, the board found that the respondents' evidence contained weaknesses and inconsistencies that were significantly greater than those in the evidence provided in support of the complaint, and the board was satisfied on the balance of probabilities that the refusal was due to the fact that Ms. Willis was in receipt of public assistance.

Having upheld the allegations, the board made the following order:

- the respondents were ordered to pay the complainant the amount of $275.79 as special damages, representing the out-of-pocket expences she incurred as a result of discrimination, and $1,000 as general damages for the mental anguish she suffered;

- the respondents were also directed to post Code cards at all business premises owned or occupied by them.

Ontario Human Rights Commission and Kennedy Towers

The Commission initiated this complaint on behalf of a woman who alleged that the respondent initially refused to rent to her on the grounds that she was single and did not have a co-signer for her lease.

Ultimately, she became a tenant without a co-signer. However, the Commission was seized with the issue of whether the requirement of a co-signer to the lease of an unmarried tenant or the refusal to rent to a single person would constitute an infringment of his or her rights under the Code.

In his testimony, the owner of the building denied that he discriminated against single persons. He explained that co-signers were required when the management had doubts about the financial responsibility of a prospective tenant, whether he/she was married or single. He produced a list of 23 names of persons who he said were single tenants of the building. Only two of them had been required to obtain co-signers.

The board of inquiry held that if the requirement of a co-signer applied only to single persons, it would contravene the Code. However, the board found on the facts that the requirement of a co-signer was invoked only when the owners of Kennedy Towers doubted the financial reliability of a potential tenant, regardless of his or her marital status. On this basis, the board dismissed the complaint.

GOODS, SERVICES, FACILITIES, CONTRACTS

Age, Marital Status, Sex, Race, Colour, Citizenship, Ethnic Origin, Handicap

Zurich Insurance Co. and Ontario Human Rights Commission, Bates

Mr. Bates, a 20-year old single man, had alleged that although he had had no driving accidents and had never received any demerit points, he was informed by the respondent that he must pay higher rates than those paid by women, married men in his age group and single men who were 25 years of age or older.

The board of inquiry examined the legal soundness of the insurance industry's rate classification system, which uses such factors as age, sex and marital status to determine automobile insurance premium rates. The board concluded that although the insurance industry has acted in good faith (having developed its present system for business and economic reasons), "the current automobile driver classifications of unmarried male drivers under 25 contravene the Code" and that the present rate classifications are not based on reasonable and bona fide grounds.

The respondent appealed the decision to the Divisional Court of the Supreme Court of Ontario.

The Court allowed the appeal and set aside the decision of the board of inquiry. The Court's decision stated that the criteria based on age, sex and marital status for drivers under 25 have historically been an important consideration on which rate structures have ultimately been established within the insurance industry: "While doubts may exist that the present system need be continued, it was, in 1983, and is, still, the only game in town."

The Court stated: "It is our view that the distinctions created by the classification system are reasonable distinctions based on age, sex and marital status. The available statistical information demonstrates clearly that the single male driver under 25 years of age is the highest risk classification. ...it appears reasonable that the groups causing the highest loss costs should pay the highest premium."

Counsel for the Commission contended that to rate the complainant as a high risk driver simply because he is an unmarried male in the 19- to 20-year-age group is unfair; while many in the group may represent higher risks, the complainant may not and, in fact, he may be a much better risk than the other members of his group. However, the Court concluded that it is inevitable that in every class there will be drivers who represent worse or better risks than average; nonetheless, the premium must be based on the average.

The Commission has been granted leave to appeal this decision to the Ontario Court of Appeal.

Ontario Human Rights Commission and the Ministry of Education

The Commission had initiated a complaint against the ministry because of a policy that foreign students attending secondary schools in Ontario while on student visas are not eligible to receive the Ontario Scholarship. The complaint alleged that this policy is in contravention of the Code in respect of persons identified by race, colour, citizenship, ancestry, place of origin, ethnic origin and family status.

The board of inquiry rendered an interim decision with respect to an application made by counsel for the respondent, who requested the names of persons from whom complaints about the policy were received and the names of persons who had requested the Commission to initiate a complaint against the ministry.

The board decided as follows, on the basis of Ontario case law:

- a complaint of discrimination must contain all the essential elements, including identification of the complainant and the victim or the class being discriminated against;

- the respondent must be aware of all matters that form a substantial part of the facts material to the issues. Evidence in support of those facts need not be divulged;

- the respondent must be provided with sufficient information to allow it to prepare to meet all the allegations against it.

The board concluded that the complaint in question satisfied these criteria, and therefore held that further particulars were inappropriate and need not be provided by the Commission. The respondent's application was dismissed.

Blainey and the Metro Toronto Hockey League

The Court of Appeal ruled during the fiscal year that section 19(2) of the Human Rights Code, 1981, was unconstitutional and of no force and effect. This section was repealed in December 1986.

The Court's decision was rendered on April 17, 1986 in a case concerning Justine Blainey, a young woman who, at the age of 12 years, was not permitted to play hockey for a team in the Metro Toronto Hockey League because the regulations of the Ontario Hockey Association restrict eligibility for membership to male persons.

In a two-one split decision, the Court ruled that section 19(2) of the Code, which permitted discrimination in all athletic activities because of sex, was inconsistent with the equality rights provision of the Canadian Charter of Rights and Freedoms and could not be defended as a reasonable limit under section 1 of the Charter.

The Court noted that a distinction based on public decency or for the physical protection of participants would be reasonable, but no such legislative purpose was disclosed by the broad language of section 19(2), which prescribed no limits and provided no guidelines.

The Court also noted that there was no evidence before the Court that males were being denied the right to full membership or participation in athletic organizations. Therefore, the Court was of the view that section 19(2) resulted also in adverse effect discrimination against females.

With the Court's declaration that section 19(2) of the Code was unconstitutional, Justine Blainey was afforded the right to pursue her complaint before the Commission.

The Ontario Hockey Association's application for leave to appeal to the Supreme Court of Canada was denied.

Mary Beth Hickling, by Dianne and John Hickling; Paige Horbay, by Irene and Henry Horbay; Maureen Legris, by Marian and Harry Legris and the Lanark, Leeds and Grenville County Roman Catholic Separate School Board

The three complainants are children, each classified as a trainable mentally retarded pupil. The complaints were filed by their respective parents, who are separate school supporters. Two of the three children (Paige Horbay and Maureen Legris) were required by the respondent school board to spend approximately three-quarters of each school day in local public schools designed to cater to the special educational needs of mentally retarded students. The remaining quarter of the school day was spent in the denominational separate school. The third child, Mary Beth Hickling (who is less severely handicapped), spent about 50 percent of the school day in the public school and the other half at the separate school.

All non-handicapped children of separate school supporters living in the area were allowed to register and attend separate school full time, if their parents so wished. The Commission and the complainants maintained that because the children were excluded from the separate school for much of the day, they were being denied a Catholic education because of handicap, contrary to their right under the Code to equal treatment with respect to services and facilities without discrimination. The respondent did not deny that the children were treated differently from other children of separate school supporters in the provision of educational services and facilities because of their handicap.

However, the school board argued that there was no violation of the Code as the children were allowed sufficient time in Catholic schools to receive a Catholic education. Moreover, if they were denied a Catholic education, such a denial was not discriminatory because they received services that the respondent reasonably decided were of greater educational importance to the children. The school board also claimed that the complainants' real objective was to integrate the children into regular classrooms rather than to provide a Catholic education. Finally, the school board claimed that the Education Act explicitly authorized the behaviour of the respondent and, alternatively, if the Code has been breached, the children were accommodated as far as possible without incurring undue hardship.

The board of inquiry held, on the basis of the evidence, that:

- the children were denied a full Catholic education because they are mentally handicapped, contrary to the Code;

- the fact that the complainants' prime objective was to integrate their children into regular classrooms rather than provide a Catholic education is irrelevant if a right to equal treatment under the Code has been violated;

- pursuant to section 46(2), the Code prevails over inconsistent provisions of other legislation, including the Education Act, unless a "notwithstanding" clause exists in the other legislation; and

- the respondents did not make reasonable efforts to accommodate the complainants short of undue hardship, pursuant to section 40(2) of the Code.

Based on the above findings, the board ordered that the respondent separate school board must register Maureen and Paige and that it must provide them with a Catholic education beginning on October 1, 1986. There was no order respecting Mary Beth as she is now enrolled at the secondary school and is receiving an identical education to any other student.

The respondent is appealing this decision to the Divisional Court of the Supreme Court of Ontario.

Kellerman and Al's Restaurant and Tavern

The complainant, John Kellerman, has cerebral palsy, a condition that severely impairs his physical movements and speech. In his complaint, he alleged that he was denied equal treatment with respect to services by the respondent restaurant and its owner, George Zarafonitis, because of his physical handicap.

Mr. Kellerman alleged that he drove his motorized wheelchair to the restaurant and was assisted into the dining room by some customers. He ordered lunch and a glass of wine. He was served the meal, but not the wine. Before he had finished eating, Mr. Kellerman said he was "roughly" escorted out of the restaurant by the owner. This evidence was generally supported by the waitress who had served him. Mr. Zarafonitis testified that he had told the waitress not to serve the wine as he believed that Mr. Kellerman was in an intoxicated condition.

The board chairman explained that those who serve liquor must be educated about the manifestations of handicaps like the complainant's, and therefore concluded that Mr. Zarafonitis was negligent in assuming that Mr. Kellerman was intoxicated.

The board also found that the complainant was discriminated against in being escorted out of the restaurant before he wished to leave. The board chairman indicated that it appeared Mr. Zarafonitis may have been upset at the mess created by Mr. Kellerman while he ate, and for this reason, and in order not to upset his other customers, he, in a very firm and determined manner, made the complainant leave against his will. The board concluded that these two incidents violated the Code as they resulted in Mr. Kellerman's being denied equal treatment with respect to a service because of his handicap.

In assessing the appropriate damages, the board took into account that Mr. Kellerman was "extremely enraged," claimed that his "integrity was damaged" and was "tired of being pushed around." Therefore, the board awarded him $500 (including interest) for his "hurt feelings and damaged integrity."

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TABLE 1 - Complaints Received by Region of Registration and Ground: 1986/87

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others*	**Total**	Region % of Total
Eastern	14 (8)	7 (4)	7 (4)	33 (20)	12 (7)	12 (7)	7 (4)	3 (2)	68 (40)	6 (4)	**169** (100)	(10)
Hamilton/Niagara	16 (10)	5 (3)	3 (2)	30 (19)	18 (11)	22 (14)	8 (5)	8 (5)	39 (25)	9 (6)	**158** (100)	(9)
Northern	20 (8)	4 (2)	4 (2)	49 (20)	17 (7)	43 (17)	15 (6)	7 (3)	84 (29)	6 (6)	**249** (100)	(14)
Southwestern	40 (16)	9 (4)	4 (2)	41 (16)	23 (9)	25 (10)	7 (3)	9 (4)	89 (33)	8 (3)	**255** (100)	(15)
U.F.H.	-	-	-	1 (1)	-	1 (1)	-	-	86 (96)	2 (2)	**90** (100)	(6)
Toronto Central	79 (24)	26 (8)	13 (4)	38 (12)	17 (5)	50 (15)	6 (2)	8 (2)	86 (26)	5 (2)	**328** (100)	(18)
Toronto East	41 (16)	9 (3)	2 (1)	31 (12)	30 (12)	31 (12)	9 (3)	9 (3)	89 (33)	12 (5)	**263** (100)	(15)
Toronto West	42 (19)	6 (3)	6 (3)	23 (11)	14 (6)	15 (7)	8 (4)	10 (5)	81 (37)	10 (5)	**215** (100)	(13)
Total (%)	252 (15)	66 (4)	39 (2)	246 (14)	131 (8)	199 (11)	60 (3)	54 (3)	622 (37)	58 (3)	**1727** (100)	(100)

TABLE 2 - Employment Complaints Received by Region of Registration and Ground: 1986/87

Eastern	12 (9)	5 (4)	6 (5)	25 (19)	11 (8)	9 (7)	4 (3)	1 (1)	59 (44)	-	**132** (100)	(9)
Hamilton/Niagara	11 (9)	4 (3)	2 (2)	29 (23)	18 (15)	18 (15)	4 (3)	3 (2)	34 (27)	1 (1)	**124** (100)	(9)
Northern	5 (2)	3 (1)	1 (-)	44 (21)	17 (8)	40 (20)	10 (5)	3 (1)	81 (42)	1 (-)	**205** (100)	(15)
Southwestern	32 (16)	3 (1)	3 (1)	36 (17)	21 (10)	22 (11)	3 (1)	2 (1)	83 (42)	-	**205** (100)	(15)
Toronto**	138 (19)	27 (4)	20 (3)	87 (12)	57 (8)	88 (12)	11 (1)	6 (1)	302 (39)	4 (1)	**740** (100)	(52)
Total (%)	198 (14)	42 (3)	32 (2)	221 (16)	124 (9)	177 (13)	32 (2)	15 (1)	558 (40)	6 (-)	**1406** (100)	(100)

* Public Assistance, Record of Offences, Sexual Orientation, Reprisal, Breach of Settlement, and No Ground (Sec. 33).

** Total for the four Regions in Metro Toronto (TC; TE; TW; and U.F.H.)

TABLE 3 - Complaints Received by Region of Registration and Ground: 1985/86

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	**Total**	Region % of Total
Eastern	16 (11)	5 (3)	4 (3)	33 (23)	14 (10)	8 (6)	5 (3)	2 (1)	54 (37)	4 (3)	**145** (100)	(11)
Hamilton/Niagara	15 (8)	3 (1)	5 (3)	23 (12)	14 (7)	20 (10)	9 (5)	7 (4)	84 (44)	12 (6)	**192** (100)	(14)
Northern	19 (12)	3 (2)	1 (1)	24 (16)	19 (12)	12 (8)	9 (6)	5 (3)	54 (35)	8 (5)	**154** (100)	(11)
Southwestern	35 (18)	8 (4)	3 (1)	35 (18)	24 (12)	27 (14)	5 (2)	11 (5)	46 (23)	7 (3)	**201** (100)	(15)
Toronto Central	59 (20)	18 (6)	13 (4)	47 (16)	21 (7)	37 (13)	10 (4)	5 (2)	73 (25)	9 (3)	**293** (100)	(22)
Toronto East	41 (21)	2 (1)	8 (5)	33 (17)	18 (9)	16 (8)	2 (1)	2 (1)	62 (32)	8 (5)	**191** (100)	(14)
Toronto West	45 (25)	9 (5)	6 (3)	13 (7)	11 (6)	20 (11)	10 (6)	2 (2)	58 (32)	6 (3)	**180** (100)	(13)
Total (%)	230 (17)	48 (4)	40 (3)	208 (15)	121 (9)	140 (10)	50 (4)	34 (2)	431 (32)	54 (4)	**1356** (100)	(100)

TABLE 4 - Employment Complaints Received by Region of Registration and Ground: 1985/86

Eastern	12 (11)	2 (2)	3 (2)	29 (27)	14 (13)	6 (6)	1 (-)	2 (2)	40 (37)	-	**109** (100)	(10)
Hamilton/Niagara	13 (9)	2 (2)	5 (3)	22 (15)	14 (9)	20 (13)	1 (-)	4 (3)	70 (46)	-	**151** (100)	(14)
Northern	9 (7)	2 (2)	1 (1)	17 (15)	19 (16)	12 (10)	6 (3)	1 (1)	53 (45)	-	**120** (100)	(11)
Southwestern	24 (17)	5 (3)	2 (1)	28 (19)	24 (17)	21 (14)	2 (1)	1 (1)	37 (26)	2 (1)	**146** (100)	(14)
Toronto **	123 (22)	20 (4)	17 (3)	84 (15)	51 (9)	65 (12)	12 (2)	6 (1)	171 (31)	4 (1)	**553** (100)	(51)
Total (%)	181 (17)	31 (3)	28 (3)	180 (17)	122 (11)	124 (11)	22 (2)	14 (1)	371 (34)	6 (1)	**1079** (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement, and No ground (Sec.33).

** Total for the three Metro Toronto Regions: UFH is included in Toronto Central.

TABLES ON COMPLAINTS RECEIVED

Tables 1 to 9 detail the number and type of complaints received by the Commission, indicating the level of Code usage by the public in Ontario. Tables are shown for fiscal years 1986/87 and 1985/86 for comparison purposes.

TABLES 1 AND 3 – Complaints received by Region of Intake and Ground: 1986/87

These tables cover complaints received in terms of:

- o regions of the province where complaints were registered;
- o grounds of discrimination quoted in complaints.

In 1986/87 the three Metro Toronto regions and U.F.H. combined, received 899 complaints or 52 per cent of the overall total, while the four regions outside Metro received 832 or 48 per cent.

Allegations on the grounds of race and ethnic origin constituted 23 per cent of the Metro total of complaints compared to 14 per cent in the Regions, while the percentages for complaints of sex and sexual harassment were 17 per cent in Metro and 27 per cent in the Regions. The percentages of complaints in all other grounds were similar in both Metro and the Regions.

These patterns are similar to those observed in 1985/86.

TABLES 2 and 4 – Employment Complaints received by Region of Intake and Ground: 1986/87

These tables cover employment-related complaints only.

Employment complaints received in 1986/87 show trends similar to those described above, for tables 1 and 3.

TABLE 5 - Complaints Received by Ground and Provision, 1986/87

Code Provisions: (Ground:)	Race/Colour	Ethnic Origin	Creed	Sex*	Sexual Orientation**	Sexual Harassment	Age*	Marital Status*	Family Status*	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	**Total**	Provision % of Total
Services	32	14	5	17	1	–	8	13	9	48	–	–	–	3	**150**	9
Accommodation	16	8	1	5	–	7	13	12	27	11	13	–	–	–	**113**	7
Contracts	1	–	1	3	–	–	–	3	2	3	–	–	–	–	**13**	1
Employment	198	42	32	221	1	124	177	32	15	558	–	4	–	2	**1,406**	80
Vocational Associations	4	2	–	–	–	–	1	–	1	2	–	–	–	1	**11**	1
Reprisal	1	–	–	–	–	–	–	–	–	–	–	–	26	–	**27**	2
Breach of Settlement	–	–	–	–	–	–	–	–	–	–	–	–	7	–	**7**	–
Total	**252**	**66**	**39**	**246**	**2**	**131**	**199**	**60**	**54**	**622**	**13**	**4**	**33**	**6**	**1,727**	100
Ground % of Total	15	4	2	14	–	8	11	3	3	37	1	–	2	–	100	
Extension of Code Provisions Also Cited in Complaints:																
Constructive Discrimination3		1	3	7	–	1	3	3	1	5	–	–	1	–	**28**	23
Association Discrimination4		2	1	6	–	–	–	3	3	4	1	–	–	–	**24**	20
Announced Discrimination	1	–	–	–	–	–	–	–	2	–	–	–	–	–	**3**	2
Advertising	–	1	–	2	–	–	2	2	–	–	–	–	–	–	**7**	6
Application Forms	–	–	–	15	–	–	26	9	–	9	–	–	–	–	**59**	49
Total	8	4	4	30	–	1	31	17	6	18	1	–	1	–	121	100

* Grounds extended as of 18/12/86.
** New ground, as of 18/12/86.

TABLE 6 – Complaints Received by Ground and Provision, 1985/86

Code Provisions: (Ground:)	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	**Total**	Provision % of Total
Services	20	15	8	21	–	2	10	2	49	1	–	–	8	**136**	10
Accommodation	25	2	3	2	–	9	18	18	10	20	–	–	–	**107**	8
Contracts	4	–	1	1	–	3	–	–	1	–	–	–	–	**10**	1
Employment	181	31	28	182	121	124	22	14	371	–	3	–	3	**1,080**	80
Vocational Associations	–	–	–	1	–	2	–	–	–	–	–	–	–	**3**	–
Reprisal	–	–	–	1	–	–	–	–	–	–	–	17	–	**18**	1
Breach of Settlement	–	–	–	–	–	–	–	–	–	–	–	2	–	**2**	–
Total	**230**	**48**	**40**	**208**	**121**	**140**	**50**	**34**	**431**	**21**	**3**	**19**	**11**	**1,356**	100
Percentage	17	4	3	15	9	10	4	2	32	2	–	1	1	100	
Extension of Code Provisions Also Cited in Complaints:															
Constructive Discrimination	1	1	1	10	–	–	–	–	3	–	–	–	–	**16**	26
Association Discrimination	9	–	1	1	–	1	4	–	5	1	–	–	–	**22**	36
Announced Discrimination	–	–	–	1	–	–	–	–	–	–	–	–	–	**1**	2
Advertising	–	–	–	1	–	1	–	–	–	–	–	–	–	**2**	3
Application Forms	1	–	–	4	–	5	2	1	4	–	–	–	–	**17**	28
Employment Agencies	–	–	–	1	–	–	–	–	2	–	–	–	–	**3**	5
Total	11	1	2	18	–	7	6	1	14	1	–	–	–	**61**	100

TABLES 5 and 6 - Complaints Received by Ground and Provision, 1986/87

These tables cover complaints received in terms of:

- o code prohibitions quoted in complaints;
- o grounds of discrimination quoted in complaints;
- o extension of Code prohibitions also quoted in complaints.

A total of 1,727 complaints were received in 1986/87, an overall increase of 27 per cent over the 1,356 received in 1985/86. As seen from tables 1 and 5, this increase was more marked in Metro Toronto, with an increase of 35 per cent in the Metro regions and 20 per cent in the regions outside Metro.

This significant increase in the number of complaints was observed in practically all grounds.

Complaints on the ground of handicap continued to constitute the largest percentage of the total, at 37 per cent, followed by sex and sexual harassment combined at 22 per cent and race and ethnic origin combined at 19 per cent.

With respect to areas of coverage, employment-related complaints comprised 80 per cent of the total, service complaints 9 per cent, accommodation complaints 7 per cent and the other areas combined 4 per cent. By comparison, the 1985/86 figures were 80 per cent, 10 per cent, 8 per cent and 2 per cent respectively.

TABLE 7 - Complaints Received by Type of Handicap and Provision, 1986/87 (1985/86)

Handicap: \ Provision:	1986/87							1985/86						
	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	% of Total	Services	Accommodation	Contracts	Employment	Vocational Associations	**Total**	% of Total
Sensory (vision/hearing/speech/etc. impairments)	8	-	-	30	-	**38**	6	12	1	-	32	-	**45**	10
Respiratory (asthma/lung diseases/etc.)	2	-	-	20	-	**22**	4	-	-	-	15	-	**15**	3
Limbs and Digits (amputation/impairment of limb/digit/etc.)	2	-	-	90	-	**92**	15	3	1	-	57	-	**61**	15
Cardiovascular (heart disease/hypertension/stroke/etc.)	3	-	1	23	-	**27**	4	2	1	-	10	-	**13**	3
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	10	3	-	10	-	**23**	4	14	2	-	10	-	**26**	6
Neurological (epilepsy/seizures/brain injury/etc.)	3	2	-	20	-	**25**	4	5	1	-	18	-	**24**	6
General Diseases or Disorders (back injuries/ allergies/cancer/diabetes/sick leave, etc.)	10	1	-	208	1	**220**	35	7	2	1	140	-	**150**	35
Miscellaneous (multiple handicaps/obesity/etc.)	1	2	-	79	-	**82**	13	2	-	-	31	-	**33**	8
Learning Disability (dyslexia/etc.)	-	-	-	2	-	**2**	-	1	-	-	-	-	**1**	-
Mental Retardation (or mental impairment)	2	2	-	-	-	**4**	1	1	-	-	1	-	**2**	-
Mental Disorder (pyschiatric illness/ personality disorders/a-dictions/etc.)	6	1	2	34	1	**44**	7	2	2	-	36	-	**40**	9
Record of claim under the Worker's Compensation Act	1	-	-	42	-	**43**	7	-	-	-	21	-	**21**	5
Total	**48**	**11**	**3**	**558**	**2**	**622**	100	**49**	**10**	**1**	**371**	-	**431**	100
Percentage	8	2	-	90	-	100		12	2	-	86	-	100	

TABLE 7 – Complaints Received by Type of Handicap and Provision, 1986/87

This table identifies complaints alleging discrimination because of handicap and details the types of handicap involved, comparing the situation in fiscal years 1986/87 and 1985/86.

During 1986/87 complaints citing the ground of handicap increased by 45 per cent over 1985/86. General Diseases or Disorders were cited in 35 per cent of the total handicap complaints, followed by Impairments of Limbs and Digits at 15 per cent, and Miscellaneous conditions at 13 per cent, with other categories registering lower percentages. Complaints based on Record of Claim Under the W.C.A., a new ground introduced in 1985/86, registered 43 or 7 per cent of the total.

TABLE 8 - Complaints Received by Sex of Complainant and Ground

Males			Females	
1985/86	1986/87		1986/87	1985/86
146	151	Race/Colour	97	83
33	40	Ethnic Origin	25	14
25	25	Creed	12	15
56	54	Sex	178	148
4	6	Sexual Harassment	125	116
-	1	Sexual Orientation	1	-
93	100	Age	73	45
20	10	Marital Status	46	27
9	16	Family Status	35	25
255	362	Handicap	251	175
6	4	Public Assistance	9	15
3	3	Record of Offences	1	-
14	18	Reprisal	8	3
2	2	Breach of Settlement	4	-
7	3	No Grounds (Section 33)	3	4
673	795	Totals *	868	670
50%	48%		52%	50%

* The difference between the totals on this table and on Tables 1 and 5 represents the complaints initiated by the Commission.

TABLE 8

Female complainants filed 838 complaints, or 52 per cent of the total, while males filed 795, or 48 per cent. However, this difference is due to the much larger number of complaints filed by females on the grounds of sex, sexual harassment, marital and family status; practically on all other grounds males filed substantially more complaints.

Complaints dealing with pregnancy-related situations are included in the ground of "sex," and numbered 53.

TABLE 9 - Commission-Initiated Complaints by Ground, 1986/87 (1985/86)

	1986/87	1985/86
Race/Colour	4	1
Ethnic Origin	1	1
Creed	2	-
Sex	14	4
Sexual Harassment	-	1
Age	26	2
Marital Status	4	3
Family Status	3	-
Handicap	9	1
Reprisal/Breach of Settlement	1	-
Total	64	13

TABLE 9

Where the Commission is made aware of apparent violations of the Code not necessarily related to individual victims, but with policy implications, the Code provides for the initiation of complaints under which the situation can be fully investigated.

The following examples illustrate the types of complaints initiated by the Commission in 1986/87.

- o A Separate School Board was reported to have a purchasing policy giving preference to Catholic supporters of the Board. Settlement of the matter was reached upon cancellation of this policy.

- o A newspaper was publishing job advertisements with requirements based on sex, age and ancestry. As settlement, the paper implemented a practice of screening ads to ensure compliance with the Code.

- o Allegations that a car-rental agency discriminated against Native Indians were tested, but not substantiated.

- o Numerous instances of employment application forms containing questions in violation of the Code (mostly on grounds of age, sex and handicap), leading to review and change of such forms.

- Allegations that a policy requiring applications for permanent financial assistance to be made in person is constructively discriminatory against Native Indian residents of remote communities. This is so because the residents only have direct access to representatives of the financial assistance program when the representative visits the community, every three months. Case in progress.

- Allegations that the administration of drug-use tests to job applicants is discriminatory against handicapped persons who may be rejected because they take prescription drugs. Case in progress.

- Allegations that a funding policy giving preference to Ontario graduates restrict the professional and employment opportunities for graduates from other countries and therefore is constructively discriminatory on the basis of place of origin.

TABLE 10 - Complaints Closed by Disposition and Ground, 1986/87

Ground: / Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	**Total - %**
Not Pursued (Section 33)	10 3%	3 5%	- -	7 3%	2 1%	24 11%	- -	1 2%	9 2%	- -	- -	5 19%	**61** 4%
Settled	166 57%	25 45%	36 60%	153 68%	89 67%	121 57%	40 70%	35 72%	352 69%	19 83%	- -	9 33%	**1045** 64%
Dismissed	70 24%	24 43%	14 23%	30 13%	20 15%	37 18%	6 11%	4 8%	74 14%	3 13%	1 100%	8 29%	**291** 17%
Withdrawn	47 16%	4 7%	10 17%	37 16%	23 17%	29 14%	11 19%	9 18%	74 15%	1 4%	- -	5 19%	**250** 15%
Total	**293**	**56**	**60**	**227**	**134**	**211**	**57**	**49**	**509**	**23**	**1**	**27**	**1647** 100%

TABLE 11 – Complaints Closed by Disposition and Ground, 1985/86

Ground: / Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement/ No Grounds	**Total – %**
Not Pursued) (Section 33)	3 1%	–	3 9%	2 1%	1 1%	6 5%	–	–	6 2%	–	–	–	3 75%	**24** 2%
Settled	128 55%	18 43%	20 57%	139 73%	77 74%	62 53%	34 83%	23 85%	197 65%	14 93%	3 75%	9 56%	–	**724** 64%
Dismissed	62 27%	20 48%	10 28%	17 9%	13 12%	28 24%	–	–	41 14%	1 7%	–	3 19%	1 25%	**196** 18%
Withdrawn	38 17%	4 9%	2 6%	32 17%	13 13%	22 18%	7 17%	4 15%	58 19%	–	1 25%	4 25%	– –	**185** 16%
Total	**231**	**42**	**35**	**190**	**104**	**118**	**41**	**27**	**302**	**15**	**4**	**16**	**4**	**1,129** 100%

TABLES ON COMPLAINTS CLOSED

Tables 10 to 18 detail the numbers and types of complaints disposed of during fiscal year 1986/87, as well as the nature of dispositions and settlements achieved.

TABLES 10 and 11 - Complaints Closed by Disposition and Ground, 1986/87

These tables cover complaints closed in terms of:

- o type of disposition;
- o ground of discrimination.

In 1986/87 a total of 1,647 complaints were closed, a 46 per cent increase over 1985/86.

Settlements were reached in 64 per cent of the cases closed, while 17 per cent were "Dismissed," 15 per cent were "Withdrawn" and 4 per cent were "Not pursued" (under section 33 of the Code).

Table 10 also indicates the rates at which cases were settled, dismissed or withdrawn according to grounds.

Reconsiderations

Following a Commission decision not to appoint a board of inquiry, Section 36 of the Code entitles a complainant to request a review of this decision based on the presentation of material which may affect the original decision.

During 1986/87, 87 requests for reconsideration were received and 77 completed. At the end of the fiscal year, 58 requests were being processed.

By comparison, 57 requests were received and 49 completed during 1985/86.

Caseload in Process

The caseload brought forward from 1985/86 was 1,734. During 1986/87, 1,727 cases were received and 1,647 closed, leaving a balance of 1,814 under processing at the end of the fiscal period.

TABLE 12 - Settlements Effected by Ground, 1986/87

Ground: / Settlement:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Change of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$252,678	60	26	31	8	14	31	17	28	64
Ethnic Origin	22,750	3	4	1	-	-	7	-	-	9
Creed	60,556	15	6	4	-	2	10	7	1	14
Sex & Pregnancy	98,137	56	16	5	4	6	34	17	13	56
Sexual Harassment	81,266	59	1	-	-	14	28	12	15	49
Age	674,361	40	16	2	-	6	15	8	12	34
Marital Status	16,470	15	6	-	-	1	4	6	2	7
Family Status	8,392	8	7	-	-	1	6	2	1	13
Handicap	418,283	145	99	16	1	7	62	39	28	101
Receipt of Public Assistance	715	2	6	3	-	1	5	-	2	10
Record of Offences	-	-	-	-	-	-	-	-	-	-
Reprisal/Breach/No Grounds	4,250	3	1	1	-	-	-	2	1	2
Total	**$1,637,635**	**401**	**189**	**37**	**13**	**51**	**209**	**105**	**108**	**359**

TABLE 13 - Settlements Effected by Ground, 1985/86

Ground:	Settlement: Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Change of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$164,936	41	23	11	7	9	37	12	20	56
Ethnic Origin	2,200	3	4	3	-	1	3	-	7	7
Creed	12,085	5	5	-	-	2	7	3	4	4
Sex	132,295	63	32	16	1	15	44	19	13	42
Sexual Harassment	105,245	59	3	2	1	5	26	12	20	48
Age	144,325	23	15	6	-	2	20	7	5	27
Marital Status	6,971	5	6	2	-	-	15	1	-	11
Family Status	4,814	6	7	4	-	-	5	2	3	11
Handicap	457,996	88	57	24	-	6	33	23	21	49
Receipt of Public Assistance	414	2	3	5	-	-	2	-	3	4
Record of Offences	-	-	-	1	-	-	-	1	-	1
Reprisal	19,000	4	1	-	-	1	1	4	1	2
Total	**$1,050,281**	**299**	**156**	**74**	**9**	**41**	**193**	**84**	**97**	**262**

TABLES 12 and 13 - Settlements effected by Ground, 1986/87

The purpose of settlements under the Code is two-pronged: to provide systemic remedies aimed at establishing an eventual discrimination-free environment, and provide remedy to individual victims of discrimination for their material and psychological losses.

During 1986/87, in the area of systemic remedies, there were 209 instances of changes of practices and policies, 51 educational seminars with respondents and 13 affirmative action measures implemented.

In the area of individual remedies, out of 1,045 settlements, 401 or 38 per cent of complainants received monetary compensation in the total amount of $1,637,635; 226 (or 22%) received offers of jobs or facilities or of the next available jobs or facilities. In addition, 108 (or 10%) received letters of apology, an apparently minor action but of great significance to many deeply hurt complainants.

Table 14 - Complaints Closed by Disposition, Ground and Provision, 1986/87

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	**Total**	Percentage
EMPLOYMENT														
Settled	126	16	28	142	89	104	24	16	310	–	–	–	**855**	64
Dismissed/Not Pursued	64	17	12	35	22	58	1	4	66	–	1	2	**282**	21
Withdrawn	38	2	9	34	23	27	5	2	66	–	–	2	**208**	15
Sub-Total	228	35	49	211	134	189	30	22	442	–	1	4	**1345**	100
ACCOMMODATION														
Settled	20	5	2	2	–	13	7	17	11	19	–	–	**96**	77
Dismissed/Not Pursued	2	1	–	–	–	–	3	–	1	3	–	–	**10**	8
Withdrawn	4	1	–	1	–	1	3	6	2	1	–	–	**19**	15
Sub-Total	26	7	2	3	–	14	13	23	14	23	–	–	**125**	100
SERVICES														
Settled	18	4	5	8	–	4	8	1	30	–	–	1	**79**	56
Dismissed/Not Pursued	11	9	2	2	–	–	2	1	15	–	–	5	**47**	33
Withdrawn	2	1	1	1	–	1	2	1	6	–	–	–	**15**	11
Sub-Total	31	14	8	11	–	5	12	3	51	–	–	6	**141**	100
CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT														
Settled	2	–	1	1	–	–	1	1	1	–	–	8	**15**	42
Dismissed/Not Pursued	3	–	–	–	–	3	–	–	1	–	–	6	**13**	36
Withdrawn	3	–	–	1	–	–	1	–	–	–	–	3	**8**	22
Sub-Total	8	–	1	2	–	3	2	1	2	–	–	17	**36**	100

TABLE 14 - Complaints Closed by Disposition, Ground and Provision, 1986/87

This table (which complements table 10) covers complaints closed in terms of:

- o type of disposition;
- o grounds of discrimination;
- o areas of coverage.

Consistent with trends registered in past years, complaints in the area of housing (covering all aspects of purchase or rental of residential or commercial accommodation) registered the highest rate of settlement at 77 per cent. In comparison, complaints in the combined areas of contracts, vocational associations, reprisals and breach of settlement registered the lowest settlement rate at 42 per cent.

TABLE 15 - Complaints Closed by Disposition, Sex of Complainant and Ground, 1986/87

Males					Females			
Withdrawn Nos. %	Dismissed Nos. %	Settled Nos. %	Total Nos.		Total Nos.	Settled Nos. %	Dismissed Nos. %	Withdrawn Nos. %
33 (17)	61 (32)	96 (51)	190	Race	103	67 (65)	23 (22)	13 (13)
2 (6)	16 (52)	13 (42)	31	Ethnic Origin	24	11 (46)	11 (46)	2 (8)
8 (17)	13 (28)	25 (55)	46	Creed	13	10 (67)	1 (8)	2 (25)
12 (21)	9 (16)	37 (63)	58	Sex & Pregnancy	160	107 (58)	28 (26)	25 (16)
- -	1 (25)	3 (75)	4	Sexual Harassment	129	85 (66)	21 (16)	23 (18)
16 (13)	50 (42)	53 (45)	119	Age	69	46 (67)	11 (16)	12 (17)
3 (17)	3 (17)	12 (66)	18	Marital Status	34	24 (70)	2 (6)	8 (24)
2 (14)	4 (29)	8 (57)	14	Family Status	33	25 (76)	1 (3)	7 (21)
36 (12)	57 (19)	202 (69)	295	Handicap	204	140 (68)	26 (13)	38 (19)
- -	2 (29)	5 (71)	7	Public Assistance	16	14 (88)	1 (6)	1 (6)
- -	1 (100)	- -	1	Record of Offences	-	- -	- -	- -
2 (15)	7 (54)	4 (31)	13	Other*	14	8 (57)	2 (14)	4 (29)
114 -	**224** -	**458** -	**796**	**Total ****	**799**	**537** -	**127** -	**135** -
14% -	28% -	58% -	100%	Percentage	100%	67% -	16% -	17% -

* Reprisal/Breach of Settlement/No Ground (Section 33).
** The difference between the totals on this table and on Table 9 represents the Commission-initiated complaints closed this year.

TABLE 15

This table sets out the disposition of cases according to the sex of complainants and to grounds.

TABLE 16 – Employment Complaints Closed by Disposition, Stage of Employment and Ground, 1986/87

Ground:	RACE/COLOUR														
Type of Disposition:	Black	East Indian	Asian	Native Indian	White	RACE - TOTAL	ETHNIC ORIGIN	CREED	SEX	AGE	HANDICAP	OTHERS *	**TOTAL**	% of Sub-Total	% of Total
							RECRUITMENT AND HIRING								
Settled	9	7	1	–	–	17	2	4	46	49	55	21	**194**	69	
Dismissed/Not Pursued	5	7	1	–	–	13	–	5	8	8	11	2	**47**	17	
Withdrawn	3	1	1	–	1	6	1	4	6	3	16	3	**39**	14	
Sub-Total	**17**	**15**	**3**	**–**	**1**	**36**	**3**	**13**	**60**	**60**	**82**	**26**	**280**	100	23
% of Total	–	–	–	–	–	16	9	27	29	32	19	46			
							TERMINATION								
Settled	39	16	10	2	2	69	7	12	59	41	211	14	**413**	62	
Dismissed/Not Pursued	23	12	1	–	–	36	11	4	12	44	46	3	**156**	23	
Withdrawn	9	4	–	–	–	13	–	4	20	19	37	4	**97**	15	
Sub-Total	**71**	**32**	**11**	**2**	**2**	**118**	**18**	**20**	**91**	**104**	**294**	**21**	**666**	100	55
% of Total	–	–	–	–	–	52	51	40	43	55	66	38			
							DURING EMPLOYMENT								
Settled	22	9	9	–	–	40	7	12	36	14	43	5	**157**	61	
Dismissed/Not Pursued	7	5	3	–	–	15	6	3	15	6	9	2	**56**	21	
Withdrawn	12	3	1	2	1	19	1	1	8	5	12	2	**48**	18	
Sub-Total	**41**	**17**	**13**	**2**	**1**	**74**	**14**	**16**	**59**	**25**	**64**	**9**	**261**	100	22
% of Total	–	–	–	–	–	32	40	33	28	13	15	16			
Total	**129**	**64**	**27**	**4**	**4**	**228**	**35**	**49**	**210**	**189**	**440**	**56**	**1207**	**	100
Percentage	–	–	–	–	–	100	100	100	100	100	100	100			

* Marital status; family status; record of offences.

** The difference between the totals on this table and on table 15 represents the complaints of sexual harassment (Section 6) and Reprisal (Section 7) which are not included here.

TABLE 16 - Employment Complaints Closed by Disposition, Stage of Employment and Ground, 1986/87

This table covers closed employment complaints in terms of:

- o type of disposition;
- o stage of employment;
- o ground of discrimination.

In 1986/87 the majority of the 1,206 closed employment complaints (666 or 55%) dealt with dismissal or constructive dismissal, followed by complaints dealing with hiring (280 or 23%) and with situations arising during employment (261 or 22%). This ranking applies to practically all grounds.

Cases alleging discrimination at hiring stages registered the highest settlement rate (69%) and the lowest dismissal rate (23%), consistent with a trend observed in previous years.

TABLE 17 - Employment Complaints Closed by Type of Work and Ground, 1986/87

Type of Work: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	% of Total	1985/86 TOTAL	1985/86 % of Total
Professional/ Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	46	5	17	42	8	58	58	15	**249**	18	144	16
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	6	2	3	32	20	21	22	10	**116**	8	115	13
Clerical Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	31	7	3	42	28	21	40	11	**183**	14	163	18
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	31	3	4	6	9	27	34	3	**117**	9	56	6
Operatives Punch Press/Lathe/Machine/Crane Operator, Welder, etc.)	29	4	1	15	3	5	71	3	**131**	10	85	10
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	26	5	7	47	41	30	65	19	**240**	18	160	18
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	60	9	15	28	21	27	139	10	**309**	23	172	19
Total	**229**	**35**	**50**	**212**	**130**	**189**	**429**	**71**	**1345**	**100**	895	100

* Marital status, family status, record of offences and reprisal

TABLE 18 - Cases Closed by Respondents Type of Industry and Grounds, 1986/87

Type of Industry: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	% of Total	1985/86 TOTALS	1985/86 % of Total
Natural Resources	**2**	**-**	**2**	**4**	**3**	**6**	**18**	**1**	**36**	2	17	2
Manufacturing												
Metals/Parts/Machinery	12	2	6	14	14	14	30	2	94			
Food/Tabacco	12	1	1	3	1	5	17	4	44			
Wood/Furniture/Paper	8	3	1	6	3	4	20	1	46			
Automotive/Aircraft	9	1	1	6	1	6	33	2	59			
Electrical	16	-	-	5	4	6	23	1	55			
Other	31	4	4	21	7	20	56	5	148			
Sub-total	**88**	**11**	**13**	**55**	**30**	**55**	**179**	**15**	**446**	27	280	25
Construction	-	-	-	-	**1**	**2**	**3**	**1**	**7**	-	15	1
Transportation/Communications/Utilities	**20**	**2**	**1**	**3**	**3**	**3**	**15**	**6**	**53**	3	50	4
Trade and Retail	**20**	**6**	**11**	**48**	**28**	**22**	**59**	**17**	**211**	13	155	14
Finance, Insurance, Real Estate	**33**	**9**	**6**	**10**	**10**	**26**	**43**	**66**	**203**	12	146	13
Community/Business/Personal Services												
Schools/Colleges/Univer.	9	6	1	4	2	23	10	5	60			
Hospitals/Physicians	22	4	12	21	2	7	23	5	96			
Employment Agencies	-	1	-	1	-	2	-	-	4			
Hotels/Restaurants	30	3	3	30	34	20	47	8	175			
Building Services	14	1	2	9	5	4	23	1	59			
Other	27	4	6	29	11	22	50	16	165			
Sub-total	**102**	**19**	**24**	**94**	**54**	**78**	**153**	**35**	**559**	35	352	31
Public Administration	**26**	**7**	**3**	**12**	**3**	**18**	**34**	**13**	**116**	7	114	10
Unspecified & Inapplicable	2	2	-	1	2	1	5	3	16	1	-	-
Total	**293**	**56**	**60**	**227**	**134**	**211**	**509**	**157**	**1647**	100	1129	100

* Marital Status/Family Status/Record of Offences/Reprisal/Breach of Settlement/No Grounds (S.33)

TABLE 17 - (Employment) Complaints Closed by Type of Work and Ground, 1986/87

This table identifies the occupational categories of complainants in employment-related cases, based on grounds of discrimination.

In 1986/87, the largest number of complaints was filed by persons employed in the Labour category, (309 or 23%) followed by those employed in the Professional (249 or 18%) and Services (240 or 18%). The lowest number of complaints came from the Sales (116 or 8%) and Crafts categories (117 or 9%).

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1986/87

This table details respondents by type of industry, by grounds.

In 1986/87, the majority of complaints occurred in the sectors of Community/ Business/Personal Services (559 or 35%) and Manufacturing (446 or 27%), with the other sectors registering lower percentages.

TABLE 19 - Boards of Inquiry Appointed and Completed, 1986/87 (1985/86)

	1986/87	1985/86
Boards Appointed	70	24
Boards Completed:	35	15
Pre-hearing Settlements	6	6
Decisions for Complainant	24	5
Decisions for Respondent	5	4
Board Decisions Under Appeal	16	9

TABLE 19

Appointment of 70 boards of inquiry was requested by the Commission in 1986/87, an increase of 192 per cent over 1985/86. Thirty-five boards of inquiry were completed in 1986/87, an increase of 133 per cent over 1985/86.

TABLE 20 - Inquiries, Voluntary Compliance And Public Education, 1986/87 (1985/86)

Compliance Division	1986/87	1985/86
Inquiries	50,579	47,049
Referrals	16,427	13,343
Informal Resolutions	68	86
Application Form Reviews	562	550
Advertising Reviews	167	187
Exemptions	84	90
Public Education Activities	499	403
Publications Distributed	255,115	349,500

TABLE 20

A comparison of the figures over the two-year period indicates similar levels of activity in all areas.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1986/87 (1985/86)

Sector:	1986/87 Cases: Community Relations Mediations	1986/87 Cases: Community Relations Projects	1986/87: Consultations	1986/87: Public Education Activities	1985/86 Cases: Community Relations Mediations	1985/86 Cases: Community Relations Projects	1985/86 Cases: Public Education Projects	1985/86: Consultations	1985/86: Public Education Activities
Neighbourhood Relations	31	6	27	2	21	4	0	30	15
Public Services/Facilities	12	1	19	4	24	0	0	19	8
Criminal Justice System	16	6	73	34	11	12	1	37	10
Educational Institutions	11	27	205	109	9	26	2	163	159
The Workplace	12	5	110	18	13	13	1	61	21
Unions	0	3	58	9	0	0	0	20	5
Media	15	8	48	40	6	11	0	50	77
Health/Social Services	1	13	82	30	1	4	0	38	28
Community Organizations	13	23	315	160	24	21	1	360	233
Religious Institutions	3	4	19	13	0	2	0	10	3
Government	4	55	201	49	21	41	1	130	45
Community at Large	4	21	162	66	0	2	0	15	25
Total	122	172	1,319	534	130	136	6 *	933	629

* As of June 1985 Public Education Projects were incorporated into Community Relations Projects.

TABLE 21 - **Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1986/87 (1985/86)**

Definition of Activities

Mediations:

Mediation between parties in conflict in order to diffuse situations of racial and ethnic tension at the community and institutional levels.

Projects:

Development or implementation of specific programs or policies designed to improve race relations at the community or institutional level.

Consultations:

Provision of information and advice on race relations issues to individuals and organizations as requested.

Public Education Activities:

Organization or participation in activities designed to heighten public awareness of race related issues and/or the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

Public Education Projects:

Design and delivery of race relations training programs to community organizations or institutions in order to heighten awareness of various race related issues.

Comments

There were 1,319 consultations in 1986/87, an increase of 41 per cent over the total 933 in 1985/86. This resulted from greater emphasis being placed on consulting with end users and intermediaries in order to promote wider community involvement in the area of race relations.

Public education activities totalled 534, a decrease of 17 per cent over the 629 registered in 1985/86. This reflects the Division's focused strategy of undertaking selected public education projects that are more sustained and broader in scope.

There were 122 community mediations in 1986/87 representing a decrease of 7 per cent against the 130 registered in 1985/86; and 172 community relations projects, representing an increase of 26 per cent over the 136 registered in 1985/86. This shift reflects the Division's strategic change in emphasis to assuming a proactive role in the development of policies and programs in the public and private sectors.

ONTARIO HUMAN RIGHTS COMMISSION

at March 31, 1987

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Operations Unit

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Edano-Paul, Alicia
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Ifejika, Sam
Lloyd, Eva
Loweth, Elizabeth
Schweitzer Rozenberg, Ruth
Siu, Fausta
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D'Ignazio, Dan
Guttentag, Gail

Administrative Unit

Bennett, Irene
Blackwood, Angella
Bullen, Sharon
Richards, Paul
* Russo, Mary

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Southwest Region

Somerset, Felicity
Zaidi, Urooj

Southeastern Region

Ward, Scouter

Northern Region

Recollet, Nancy
Roszell, Noella

* These staff members are on contract or secondment.

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1962 - 1987

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Jill Armstrong
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Therese Legault
Bruce Lenton
George K. Lewis
Vic Marcuz
Florette Osborne
John H. Owen
Michael Walker
Dan Welch
Eric Whist
Merv Witter

COMMISSION OFFICES

Head Office

400 University Avenue
Toronto, Ontario
M7A 1T7
(416) 965-6841

Branch Offices

Hamilton

119 King Street West
L8N 3Z9
(416) 521-7738

Kenora

808 Robertson Street
P9N 1X9
(807) 468-3128

Kingston

1055 Princess Street
K7L 1H3
(613) 547-3414

Kitchener

824 King Street West
N2G 1G1
(519) 744-8101

London

205 Oxford Street East
N6A 5G6
(519) 439-3231

Ottawa

2197 Riverside Drive
K1H 7X3
(613) 523-7530

Sault Ste. Marie

390 Bay Street
P6A 1X2
(705) 949-3331

St. Catharines

205 King Street
L2R 3J5
(416) 682-7261

Sudbury

199 Larch Street
P3E 5P9
(705) 675-4455

Thunder Bay

435 James Street South
P7E 6E3
(807) 475-1693

Timmins

273 Third Avenue
P4N 1E2
(705) 267-6231

Toronto Central

400 University Avenue
Toronto M7A 1T7
(416) 965-6841

Toronto East

2500 Lawrence Avenue East
Scarborough M1P 2R7
(416) 750-3575

Toronto West

2 Robert Speck Parkway
Mississauga L4Z 1H8
(416) 273-7811

Windsor

500 Ouellette Avenue
N9A 1B3
(519) 256-8278

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A5C

ANNUAL REPORT

1987 1988



Ontario Human Rights Commission

ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1987/1988

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Ontario Human Rights Commission
Commission ontarienne des droits de la personne

12th Floor
400 University Avenue
Toronto, Ontario
M7A 1T7

12e étage
400, avenue University
Toronto (Ontario)
M7A 1T7

Chief Commissioner
Commissaire en chef

(416) 965-6841

June 1988

The Honourable Gerry Phillips
Minister of Citizenship
77 Bloor Street West
6th Floor
Toronto, Ontario
M7A 2R9

Dear Mr. Phillips:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1987/88 for submission to the Legislative Assembly of Ontario.

Yours sincerely,

Raj Anand
Chief Commissioner

CHIEF COMMISSIONER'S REMARKS

I am fortunate in assuming my new role as Chief Commissioner during perhaps one of the most dynamic and challenging eras in human rights, not only in Ontario, but also throughout the country.

The last six years have witnessed unprecedented growth and development in terms of both our legislation and our operation, and I look forward to the opportunity of working with my colleagues in moving the Commission towards greater achievements and initiatives.

Firstly, I see our major priority as being the improvement, rationalization and judicious balancing of our complaint procedures. The Commission has been under-resourced over the last decade, particularly since the implementation of substantive changes to the Human Rights Code, beginning in 1981. Increased resources will rectify the problem to a certain degree, but more is required. We have already initiated a complete review of our procedures, and anticipate developing a manual for both internal and external use, which will familiarize the public with the process and assist us in reducing our average case closing time to six months.

My second priority is the creation of a number of distinct program units.

The Public Education and Information Unit will establish and maintain linkages with the media, the public and our constitutent groups, with a view to ultimately educating all Ontarians as to their rights and responsibilities under the Code.

The creation of a Policy and Research Unit is predicated on my belief that a broadly-based approach must be developed to the study of human rights issues, to complement our case by case enforcement activities.

The need for a Systemic Unit has been recognized for some time, to deal with discrimination on a broader scale, and to work with organizations to ensure their policies and practices do not, inadvertently, violate the Code.

A strengthened Legal Department and the addition of administrative resources will assist us to move towards an arm's-length relationship from the Government and increase our independence.

Finally, it is my intention to raise the profile of the Commission as advocate, as a major community resource. In this regard, we will be consulting on a regular basis with our constituent groups - business and industry, unions, government agencies, religious institutions, schools, the media, community groups and concerned individuals, so that our policies and procedures will result in a more expedient, efficient agency to deal with human rights concerns.

I would like to pay tribute to my predecessor, Canon Borden Purcell, for his unquestioned dedication and commitment to the human rights arena, on a local and international scale.

After almost two decades of commitment to the Commission in a number of positions, George Brown, Executive Director, has elected to return to the world of academics, where he is involved in a major research project concerning human rights development. We thank him for his legacy of the pursuit of justice and excellence, and wish him well in his new endeavour.

THE COMMISSION

Chief Commissioner: Raj Anand

Born in New Delhi, India, Mr. Anand was appointed to the Commission's highest office on December January 4, 1988. A magna cum Laude graduate in Mathematics of Queen's University, he studied at the Faculty of Law, University of Toronto, and was called to the Bar in 1980. The recipient of numerous academic honours and scholarships, Mr. Anand has also authored legal papers on the Charter's Equality Rights provision, psychiatric abuses and children's rights. In 1987, he was appointed as a one-person Task Force on the Law Concerning Trespass to Publicly-Used Property as it Affects Youth and Minorities. Prior to his appointment as Chief Commissioner, Mr. Anand was a partner in the Toronto law firm of Cavalluzzo, Hayes and Lennon.

Past Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, completed his second term as Chairman in December 1987. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.

Vice-Chairman: R. Lou Ronson

R. Lou Ronson is the recently retired Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce. He was a delegate to the "UNESCO International Workshop on Racism and Discrimination" in 1971 and is a former national Chairman of the League for Human Rights of B'nai Brith. Mr. Ronson has recently been re-appointed for another term.

Race Relations Commissioner: Dan McIntyre

Appointed to the Commission in January 1986, Mr. McIntyre is a graduate in both business administration and social work. Prior to his becoming Director of the Ontario Region of the Canadian Human Rights Commission in 1982, Mr. McIntyre served as Chief of Community Liaison for that Commission. He has been active in the trade union movement and served as President of Local 70176 of the Public Service Alliance of Canada. Earlier in his career, he worked as a human rights officer, social worker and youth services director in New Brunswick. Mr. McIntyre no longer serves as a member of the Commission.

Commissioner: George W. Bancroft

Dr. Bancroft is a Professor and former Chairman of the Department of History, Philosophy and Sociology of Education of the University of Toronto. He has written extensively on educational and social issues and inter-group relations. From 1980 to 1983, Dr. Bancroft was Executive Director of the Multiculturalism and Citizenship Division of the former Ministry of Culture and Recreation. He serves on the Board of Directors of the Canadian Council of Christians and Jews (Ontario Region).

Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in the trade union movement, Mr. Bennett also serves on the boards of the United Way, Sault College of Applied Arts and Technology, the Canadian Mental Health Association, Plummer Memorial Hospital, Community Futures, Soogoma Industries and the Plummer Foundation. Mr. Bennett's term expired in February 1988.

Commissioner: Leslie Blake-Côté

Leslie Blake-Côté utilizes her varied background in teaching, print and broadcast journalism, consulting and public relations as a Commissioner and as a feature writer for local and national trade magazines and newspapers. As researcher/host of numerous cable television documentaries, she has dealt with human rights issues and was also involved in community and volunteer endeavours. Ms. Blake-Côté resigned from the Commission when she moved out of province.

Commissioner: John T. Cochrane

Mr. Cochrane is an Executive Board member of Local 6500, United Steelworkers of America and Vice-President of the Sudbury and District Labour Council. He acts as an intermediary between the Workers' Compensation Board and the local union's Safety and Health Committees, gathering information relating to Workers' Compensation claims. Mr. Cochrane is also a member of the Youth Employment Services Committee and a former Director of the Elizabeth Fry Society.

Commissioner: Reva Devins

Appointed to the Commission in February 1987, Ms. Devins completed her undergraduate degree at York University, and holds law degrees from Osgoode Hall and Harvard University. Recently, she served as law clerk to a Justice of the Supreme Court of Canada.

Commissioner: A.J. Diamond

A renowned architect and planner for over 20 years, Jack Diamond has won many national and international awards in both architecture and urban planning. A graduate of the Universities of Capetown, Pennsylvania and Oxford, and lecturer/professor at a number of universities in Canada and the United States, Mr. Diamond has acted, among other endeavours, as Chairman of the National Capital Commission Design Advisory Committee.

Commissioner: Catherine L. Frazee

Ms. Frazee has been a Commissioner with the Ontario Human Rights Commission since February, 1985, and has recently been reappointed for a second term. Currently the Product Standards Co-ordinator for Esso Petroleum Canada, Ms. Frazee holds board membership in the Canadian Paraplegic Association and has actively served as a volunteer with a variety of community organizations such as the Help Line, the Canadian Special Olympics for the Mentally Disabled, the International Year of Disabled Persons and Daybreak Community for Mentally Disabled Adults.

Commissioner: Elizabeth Kishkon

A resident of Windsor, Elizabeth Kishkon was appointed to the Commission in March of 1986. She began a professional career as political commentator and interview host for the CBC in 1971, while still participating on many boards of various social service agencies. An active participant in community projects and municipal affairs, Ms. Kishkon was a member of Windsor City Council and was ultimately elected as the City's first woman mayor.

Commissioner: Louis Lenkinski

A member of the Upholsterers' International Union for many years, Mr. Lenkinski served as its business representative from 1958 to 1969. Since then, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour, and in 1984 was appointed a part-time member of the Ontario Labour Relations Board. Actively involved on the executive of a number of community organizations, Mr. Lenkinski was appointed to the Commission for a three-year term in July 1987, and currently serves as editor of Affirmation.

Commissioner: Lilian Ma

Appointed to the Commission in March 1986, Lilian Ma is currently a Research Associate, Department of Biochemistry, University of Toronto. Extensively involved in the community, Dr. Ma has held executive and member positions on the Canadian Ethnocultural Council, Chinese Canadian National Council, National Organization of Immigrant and Visible Minority Women of Canada and Council of Chinese Canadians in Ontario. She sits as a member of the Equality Rights Panel as well, which was set

up by the Canadian Council on Social Development to administer the federal Court Challenge program.

Commissioner: Shirley O'Connor

Ms. O'Connor, who is President of the Ontario Native Women's Association, is a resident of Sioux Lookout, Ontario. She is a former Executive Director of the Nishnawbe Gamik Friendship Centre and was a member of the Sioux Lookout Chamber of Commerce and the Town Council Economic Development Committee from 1984 to 1986. Ms. O'Connor also served on the Governing Board of the Sioux Lookout General Hospital and on the Board of Directors of the Ontario Métis and Non-Status Indian Association.

Commissioner: Robert G. Paris

Newly appointed to the Commission in February 1987, M. Paris is currently Director of the Centre for Legal Translation and Documentation at the University of Ottawa. A graduate of both Laval University and Osgoode Hall Law School, M. Paris was called to the Bar in 1954. He is also a part-time professor in the Faculty of Law, University of Ottawa.

Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was Member of Parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the National Chairman of the Native Housing Task Force and is an honorary life member of five Métis, Indian and non-status Indian associations. Mr. Rheaume's second term as a Commissioner expired in February 1988.

COMMISSION INITIATIVES

1987/88

Commission Reorganization

In late 1987, the Commission was transferred from the Ministry of Labour to the new Ministry of Citizenship. Also located in this Ministry are the Multiculturalism and Citizenship Division and the Race Relations Directorate.

In addition, the Commission is experiencing a number of other major changes and a significant increase to its base budget. With the appointment of Raj Anand as Chief Commissioner on January 4, 1988, a reorganization of the Commission's operations was begun and new priorities were defined. A new Commission structure and major changes to its programs will be developed during fiscal year 1988/89.

It is also planned to make the Commission more independent by placing its operations at arm's length from the government.

The Human Rights Code has been characterized by the Supreme Court of Canada as quasi-constitutional in its importance. The Commission recognizes that the vigorous and autonomous enforcement of the Code must be — and must appear to be — independent of the government of the day. In order to enhance this independence, the Commission will move out of government facilities during fiscal year 1988/89 and relocate to independent quarters in each of its 15 centres across Ontario.

Advocacy and the prevention of discrimination over the long term can only be achieved with a strong educational and public relations program. A Public Education and Information Unit will be established to communicate to the media and Ontario communities the policies and practices of the Commission as well as the legal rights and responsibilities contained within the Code. The Unit will provide specialized support to Commissioners and staff by undertaking research, developing models and educational materials and co-ordinating program delivery.

To assist the Commission in formulating its own policy, as well as developing positions with regard to broader areas of human rights and social justice which warrant attention and intervention, a Policy and Research Unit will be established. This will also increase the Commission's capacity to assist the public regarding the appropriate interpretation of the Code, by way of guidelines and policy statements.

A new Systemic Unit will be established to enable a proactive approach to systemic discrimination. This will serve to reduce the number of individual complaints over the long term, by removing the institutionalized barriers to equality of opportunity that operate as built-in headwinds to racial minorities, women, persons with handicaps and other minority groups.

A major priority for fiscal year 1988/89 is the improvement, rationalization and judicious balancing of complaint-handling procedures. Conciliation and compliance are the primary functions of the Commission, and represent the largest part of its human and financial resources. Consistent and fair procedures and the elimination of undue delays in the resolution of complaints are vital to the interests of all the Commission's constituencies. A procedural manual for both internal and external use will be developed during fiscal year 1988/89.

Ongoing staff training will become a priority, as will a reduction of case processing time to an average of six months.

Resources will be allocated to deal with the increased workload in the Conciliation and Compliance Division, and to strengthen the Commission's administrative capabilities and legal services.

The increasingly litigious nature of complainants and respondents has resulted in more participation by lawyers in the complaint process. A growing number of complaints is proceeding to Boards of Inquiry, appeals from decisions of Boards and judicial review, which necessitates an increase in legal support. For these reasons, an independent legal unit will be created staffed by counsel who are independent of the Attorney-General and whose expertise is specifically within the field of human rights law.

Advocacy

The Chief Commissioner has established many new linkages with the Commission's constituent groups and consults with them on a regular basis. An essential part of the review of compliance procedures will be consultation with representatives of both complainant and respondent groups in order to hear their suggestions and criticisms with regard to the existing procedures.

It is important that the voice of the Commission be heard with that of other organizations actively involved in promoting human rights and equity rights, particularly when those rights are at risk. To that end, the Commission made submissions before the Senate Standing Committee on Legal and Constitutional Affairs on Bill C-55, which provides for a new refugee determination policy. The Commission also expressed its concerns with regard to the Meech Lake Accord before the Select Committee on Constitutional Reform.

The Chief Commissioner appeared before the Standing Committee on the Administration of Justice with respect to Bill 2, to express the support of the Commission for the government's initiative to prohibit distinctions being made in insurance rates on the basis of sex, age, marital status, family status or handicap — all designated grounds under the Code.

In his presentation, he stated that the Commission has a statutory duty to promote the principle that all Ontarians have a right to be assessed on their own merit, rather than being rewarded or penalized on the basis of stereotypes or statistical averages of group characteristics.

The Commission also submitted a brief to the Task Force on Access to Professions and Trades in Ontario. The Task Force was established to examine the existence of discriminatory barriers to accreditation experienced by persons who received their credentials in schools outside of Canada.

Public Education and Community Liaison

The Commission hosted the 15th annual conference of the Canadian Association of Statutory Human Rights Agencies (CASHRA) in May 1987. Participating in the conference sessions were nearly 200 delegates from human rights agencies across Canada.

Among the resolutions passed by the Association at the conference was the following:

> Be it resolved that CASHRA contact all Ministers of Education and urge them to integrate within the prescribed curriculum, the teaching of human rights, consistent with the principles enunciated in the Universal Declaration of Human Rights, The Canadian Charter of Rights and Freedoms and appropriate federal, provincial and territorial legislation. This would include in-service training for teachers to ensure the effective integration of this material.

Among the conference sessions and workshops were the following: international issues and their impact on human rights, the role of municipalities in race relations, handicap and insurance, pre-employment medicals and mandatory drug testing and evidentiary considerations relating to persons with a handicap and reasonable accommodation.

A highlight of the conference was a banquet celebrating the Ontario Commission's 25th anniversary.

During the early months of 1988, the Chief Commissioner met with representatives and officials of advocacy and community organizations, unions, business and industry and religious organizations. He delivered speeches on several occasions, including a seminar on AIDS sponsored by the Commission, the opening ceremonies of Black Awareness Week in Kingston, the Central Region Cabinet seminar of the League for Human Rights, an educational session at Holy Blossom Temple in Toronto, and a "Law for the Company Counsel" seminar sponsored by the Law Society of Upper Canada.

Mr. Anand held discussions with the Advocacy Resource Centre for the Handicapped, the Blind Organization of Self-Help Tactics, the Urban Alliances of Toronto, Windsor and London, officials of the Toronto Transit Commission and the Metropolitan Toronto Police Commission. He attended conferences sponsored by the Tai Chi Association, the Personnel Association of Ontario and the Human Rights and Racial Equality Association of Hamilton and District. He also met with the Coalition of Lesbian and Gay Rights, the Women's Legal Education and Action Fund, the Association of Black Trade Unionists, the National Organization of Immigrant and Visible Minority Women of Canada, the Ontario Federation of Labour and the Peel Multiculturalism Council.

LEGAL DEVELOPMENTS

1987/88

Introduction

In 1987/88, the case law surrounding the Human Rights Code continued to evolve with the issuing of several important decisions by Boards of Inquiry and the courts. Included among these decisions are two judgements by the Supreme Court of Canada which have positive and far-reaching implications for the protection of human rights in Ontario and throughout Canada. This section includes a summary of the most important decisions that were handed down in the past year.

The Ontario Human Rights Commission has five permanent counsel positions. In addition to providing the Commission and its staff with legal advice and direction, counsel are often requested by community groups and organizations to participate in public educational activities. In the past year, counsel have participated in lectures, presentations and mock hearings for numerous organizations, including the Law Society of Upper Canada, the Canadian Bar Association - Ontario, Ontario Police College, Rent Review Hearings Board, Canadian Association of Statutory Human Rights Agencies (CASHRA), the University of Toronto Faculty of Law and the Ontario Hospitals Association. Counsel have also participated on a number of committees, including a Canadian Bar Association - Ontario committee on mandatory drug testing in the workplace and a committee on minority rights. Further, Commission counsel have engaged in dialogue with several organizations within and without government, including the Pay Equity Commission and Women's Legal Education and Action Fund.

Decisions

The Courts

The move to obtain meaningful remedies for victims of discrimination was advanced significantly by the Divisional Court decision in Karumanchiri, Ng and Yan v. Liquor Control Board of Ontario et al. The Board of Inquiry found that the company had discriminated against Messers Karumanchiri, Ng and Yan in promoting a white employee to the position of Director of Laboratory Services. The Divisional Court upheld this finding.

The most significant aspect of this case was the order that Mr. Karumanchiri be appointed Director of Laboratory Services. The company argued that the Board of Inquiry exceeded its jurisdiction by ordering that Mr. Karumanchiri be placed in a position which was already occupied. The Divisional Court disagreed, finding that the Code should be accorded a broad and liberal interpretation in order to, as far as possible, remedy the effects of or prevent discrimination.

The Divisional Court did overturn a Board order of costs against the company. The court held that in human rights hearings, costs can be ordered against the Human Rights Commission only, pursuant to Subsection 40(6) of the Code.

In Piazza v. Airport Taxicab, the Board of Inquiry found that Ms. Piazza had been the victim of sexual harassment and was ultimately dismissed as a result. The Board ordered compensation for the entire amount of time Ms. Piazza was out of work following her dismissal. While upholding the finding of discrimination, the Divisional

Court held that the measure of damages should be calculated as in a wrongful dismissal case — a period of time of reasonable notice less any mitigation. The Commission has received leave to appeal the decision of the Divisional Court to the Court of Appeal.

The Supreme Court of Ontario ruled in The Canada Trust Company v. Ontario Human Rights Commission that it had jurisdiction to consider whether the trust terms established by the Leonard Foundation offended the Code before the Commission had a chance to complete its investigation and determine if a Board of Inquiry should be appointed. The trust in question contained a racially restrictive provision and a recital stating that "the Settlor believes that the White Race is, as a whole, best qualified by nature to be entrusted with the development of civilization and the general progress of the world along the best lines." While ruling the recitals containing the racially offensive remarks were inoperative, the Court held that the trust did not come within the definition of "services" in Section 1 of the Code, and thus the Commission had no jurisdiction to deal with the issue. Alternatively, if the trust did constitute a service, it was exempted by reason of Section 17 of the Code. This section permits special interest organizations to restruct their rendering of services to persons similarly identified. The Commission is appealing this decision.

In Prashad v. Commercial Union Assurance of Canada, the Divisional Court quashed a decision by the Commission made on reconsideration to appoint a Board of Inquiry. The basis of the decision to quash the appointment was that there were no facts before the Commission when it made its decision on reconsideration that were not before the Commission when it made its original decision. The Court also cited the "inordinate delay" between the original decision of the Commission and its decision on reconsideration and the fact that settlement proposals should not have been before the Commission. The Commission is appealing this decision.

The issue of a Board of Inquiry's jurisdiction to deal with a complaint was argued before the Divisional Court in Scott v. Foster Wheeler Limited. The case involved an allegation of discrimination in recruitment for a job which was to be performed outside Ontario. The Court held that the evidence established that the recruitment itself occurred in Ontario, giving the Board of Inquiry jurisdiction to deal with the case.

The Court also upheld the finding of the Board that the employer had violated the Code. In discussing the proper assessment of damages, the Court held that when a person is denied employment because of his/her race, damages for both loss of wages and insult to dignity should be awarded. The Court did reduce the award of lost wages from 27 weeks (which was the maximum time which any individual worked on the project) to 18 weeks, which was the average term of employment on the project.

The Supreme Court of Ontario considered the provisions of Section 13 of the Code, which deals with special programs to assist disadvantaged persons and groups, in the case of Blainey et al. v. Metro Toronto Hockey Association et al. The issue before the Court was whether the Commission alone must decide on the validity of a special program defence under Section 13 of the Code or whether the Commission has the jurisdiction to refer the matter to a Board of Inquiry. The Court held that there was no express or implied restriction on the Commission's power to request a Board of Inquiry when dealing with a defence under Section 13 of the Code. The Court ruled that the parties will have a better opportunity to present their views in an open hearing held before a Board of Inquiry rather than through written submissions to the Commission, as had been proposed. The decision of the Board of Inquiry is summarized in the section dealing with Board of Inquiry decisions.

Boards of Inquiry

In the Justine Blainey case, a Board of Inquiry struck down a policy prohibiting females from playing hockey on male teams except where there is no comparable, all-female team in the area. The Board held that hockey programs for girls do constitute a special program within the meaning of Subsection 13(1) of the Code. Thus, such programs can exclude boys from participation because to allow such participation - even on a limited scale - would likely have an adverse effect on the already limited opportunities for females to play competitive hockey.

The Board went on to rule, however, that the fact that hockey programs for girls are a special program and can deny participation to boys does not mean that all females must play in such programs. The evidence did not show that hockey programs for males needed to be protected from females. Further, the evidence did not support the conclusion that hockey programs for females will be at risk if females are allowed to play on male teams.

A preliminary award by a Board of Inquiry in Bhadauria v. The Toronto Board of Education dealt with two issues. The first was a request for particulars of the complaint by the Toronto Board of Education. The relevant statutory provision is Section 8 of the Statutory Powers Procedure Act, which states that a party is to be provided with "...reasonable information of any allegations...." The Board held that the requirements of Section 8 are analogous but not identical to the civil procedure concept of furnishing particulars. What is required by Section 8 of the Statutory Powers Procedures Act is that the respondent have sufficient information about the allegations to prepare itself to answer the allegations. In this case, the Board required the Commission to furnish the Toronto Board of Education with two additional pieces of information:

- the names of all schools and applicable dates on which discrimination is alleged in the process of applying for promotion; and

- all allegedly offensive criteria used by the Toronto Board of Education in its assessment process.

The second issue decided by the Board of Inquiry was whether the two-year limitation period set out in the Limitation Act applies to proceedings under the Code. The Board ruled that the inclusion of Section 33(d) in the Code precludes the operation of the two-year limitation period in the Limitations Act. The only time limitation on bringing complaints under the Code is contained in Section 33(1)(d). This preliminary award has been appealed by the Board of Education.

In Wiens v. Inco Metals Company, the Board of Inquiry was called upon to determine if a company policy which excluded women of child-bearing potential from certain areas of the plant violated the Code. The areas in question were considered by the Company to be hazardous because of toxic gas leak, especially nickel carbonyl. Complaints were brought under Section 4 of the old Code and Sections 4(1) and 10 of the new Code.

In its analysis, the Board of Inquiry held that discrimination on the basis of pregnancy is discrimination on the basis of sex. In choosing not to follow the decision of the Supreme Court of Canada in Bliss, the Board stated that although only some women get pregnant, to discriminate against such women is still discrimination on the basis of sex. The Board noted that subsequent to this complaint, the Code was amended to state specifically that discrimination on the basis of pregnancy is discrimination on

the basis of sex. It was also found that the issue in the instant case was not one of constructive discrimination, because the restrictive employment requirement is expressly directed at women. Thus, the issue is one of direct discrimination.

In order for the company to successfully defend its position, it would have to establish two things:

- there is an objective real need for the restrictive employment policy that discriminates, i.e., the policy is reasonable; and

- the need of the employer cannot be met in the particular circumstances, i.e, there cannot be reasonable accommodation, or accommodation cannot be achieved without undue hardship to the employer.

The Board held that the probability of an unplanned pregnancy and a gas leak occurring together is quite small. Even if such events were to occur, it is not at all certain that fatal injury will result. The Board concluded that, "Such a small risk does not warrant blanket discrimination on the basis of sex, affecting all women from their early teens until the late forties..." The Board, although finding in favour of Ms. Weins, awarded no damages because the company acted in good faith and with sincerity in developing the policy in question.

In Roosma v. Ford Motor Company of Canada Ltd. and the National Automobile and Agricultural Implement Workers of Canada CAW, Local 707, counsel for the company argued that if a respondent can assert that a requirement or qualification is reasonable and bona fide under Section 10(a) of the Code, then there is no duty of reasonable accommodation. The issue in this case involved an Orthodox Jewish employee who was required to work two Fridays each month.

The Board did not accept this argument by counsel for the company. The Board found that Section 10(a) is an exception to the Code and thus is to be interpreted narrowly. Further, the section speaks of a requirement, qualification or consideration that is reasonable or bona fide in the circumstances. Applying the principle set down in the O'Malley decision by the Supreme Court of Canada, the Board held that it is only reasonable and bona fide if accommodation cannot be accomplished without undue hardship.

The Board addresses two other issues in this decision. The first is that a union can be cited as a respondent in a complaint under the Code. The Board pointed to the fact that "person" is defined in Section 45(c) of the Code to include a trade union. Further, Section 8 of the Code applies to direct and indirect infringement of the Code. The Board found that the inclusion of the word "indirectly" contemplates the citing of a union in a complaint.

The Board also found that the complaints adequately allege a violation of the Code by the respondent union. The complaints make reference to a conversation with a union vice-president, who the complainants alleged advised them that the union could not be of assistance because of the terms of the collective agreement. The Board held that this was sufficient to satisfy the requirements of Section 8 of the Statutory Powers Procedure Act. The Board stated this section requires that a respondent must receive sufficient information about the allegations to enable preparation of an answer to those allegations.

The Roosma decision has been appealed by the CAW, Local 707.

Another provision of the Statutory Powers Procedure Act - Section 12 - was the subject of a preliminary hearing in Johnson v. East York Board of Education et al. Johnson alleged discrimination in employment on the basis of race, colour, ancestry, place of origin and ethnic origin. One of the personal respondents, Groom, had kept notes recording observations concerning Johnson. The Commission sought a summons from the Board Chair pursuant to Section 12 of the Statutory Powers Procedure Act requiring Groom to attend at the hearing and produce the notes in question.

Section 12(1) of the Statutory Powers Procedure Act states:

> "A tribunal may require any person, including a party, by summons
>
> a) to give evidence on oath or affirmation at a hearing; and
>
> b) to produce in evidence at a hearing documents and things specified by the tribunal, relevant to the subject matter of the proceedings and admissible at a hearing."

In its hearing, the Board held that this section cannot be used as a disguised form of discovery; nor does it permit the Board to order production or inspection of documents prior to the hearing. The Board set aside the summons previously issued to Groom because the Board had not entered into a hearing on the merits and because no factual basis for the introduction of the notes in question had been established. The Board stated that the Commission may obtain a new summons requiring Groom to give evidence at the hearing on the merits and to produce in evidence at that hearing, documents relevant to the subject matter of the proceedings and admissible at the hearing.

The Board also commented on two other points raised in argument. The first was the breadth of the summons. The Board accepted the principle that a summons is to be issued only where the documents sought are for the purpose of introduction in evidence and are relevant to the subject matter of the hearing. The summons must specify, with as much precision as is fair and feasible, the particular documents desired.

The second point was whether a party summoned to produce a document must also give oral testimony. The Board answered this question in the affirmative. The Board stated that its authority to require production of documents is limited to production in evidence at a hearing. The Board stated, "One way to attempt to ensure that the documents are indeed being produced into evidence at the hearing is to have the creator of the documents called as a witness to testify as to their authenticity and the circumstances of their creation."

Charter cases

The Code's definition of age (limited to 65 years in the area of employment) was found not to offend the Charter as the definition applies to the mandatory retirement of university teachers and librarians. In McKinney and the Board of Governors et al. and seven other applications, the Court of Appeal held that while Section 9(a) of the Code is inconsistent with Subsection 15(1) of the Charter, it is a

reasonable limit demonstrably justified in a free and democratic society, pursuant to Section 1 of the Charter.

The Court cited two policy objectives in the enactment of Section 9(a) of the Code. The first is to effect a compromise between the uncontrolled right to work and the right to work to an established date coinciding with pension rights. The second policy objective is to allow for the renewal of the workforce by the employment of younger persons.

In terms of achieving those policy objectives, Section 9(a) was found to be rationally connected to the objectives, given the integral position of age 65 retirement policies and the principle to impair the right to freedom from discrimination on the basis of age as little as possible. The Court cited balancing factors and the potential for special arrangements to be made by universities to retain faculty members after the age of 65 in finding that there is proportionality between the effects of mandatory retirement and the objectives of Section 9(a). The Court emphasized that its decision was limited to the effect of the Charter on the mandatory retirement provisions relating to university teachers and librarians.

A preliminary motion to dismiss a complaint on the basis of delay was brought in Quereshi v. Central High School of Commerce and the Board of Education for the City of Toronto. Sections 7 and 11(b) of the Charter were cited in support of this motion.

The Section 11(b) argument was based on the assertion that the respondent is facing a penal matter and is therefore in the position of a person charged with an offence. The Board did not accept this argument, citing the decision of the Saskatchewan Court of Queen's Bench in Kodellas v. Sskatchewan Human Rights Commission, Wahn and Glute. In that case, the conduct involved an alleged criminal assault. Even in these circumstances, Section 11 of the Charter was held to be inapplicable. The Board also cited the Ontario Court of Appeal decision in Re Trumbley and Fleming, which held that a person charged with a disciplinary offence under the Police Act was not charged with an offence for the purpose of Section 11 of the Charter.

In citing Section 7 of the Charter, counsel for the respondent was relying on the Kodellas decision. The Board, however, distinguished the decision in Kodellas because no specific circumstances suggesting potential prejudice could be demonstrated. In applying Section 7 of the Charter to prohibit a Board of Inquiry from proceeding in Kodellas, the Saskatchewan Court of Queen's Bench based its decision in part on the fact that the case involved the restaurant industry. The Court commented that employees in that industry - employees who were crucial to the case - are very transitory.

Supreme Court of Canada

The Supreme Court of Canada handed down two decisions in the last year dealing with the Canadian Human Rights Act (the Act) which merit consideration.

The first is Action Travail des Femmes v. Canadian National Railway. A federal Tribunal found that the recruitment, hiring and promotion policies at CN prevented and discouraged women from working in what were termed "blue collar jobs." The Tribunal included in its order a requirement that CN set a goal of 13 per cent female participation in blue collar jobs and that it hire at least one woman for every three men hired until the goal was reached. The Supreme Court upheld the order of the Tribunal. The Court held that in programs of employment equity, there can be no

dissociation of remedy and prevention because there is no prevention without some form of remedy. The Court further stated that in attempting to combat systemic discrimination, one must look to past patterns of discrimination and destroy these patterns in order to prevent the same type of discrimination in the future.

The decision of the Supreme Court in this case is a significant one in that it authorizes the enforcement of meaningful remedies where a situation of systemic discrimination is found to exist. Section 40 of the Code, which is the remedial provision, empowers a Board of Inquiry to direct a party "...to do anything that, in the opinion of the Board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices..." The Board wording contained in Section 40 of the Code and the direction of the Supreme Court in Action Travail Femmes v. Canadian National Railway leave little doubt that the Commission can move firmly against systemic discrimination where the problem is found to exist.

The Supreme Court addressed the issue of corporate responsibility for violations of human rights legislation in Robichaud v. Treasury Board. In that case, a federal Tribunal had found that Bonnie Robichaud had been sexually harassed by her supervisor. The sole issue before the Supreme Court was whether her employer - the Department of National Defence - could be held responsible for the actions of her supervisor.

Stating that it is only the employer who can remedy undesirable effects and provide a healthy working environment, the Supreme Court held the Department of National Defence responsible for the acts of sexual harassment committed by Robichaud's supervisor. The Court found this liability to be statutory in nature, placing "...responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions."

Under the Ontario Code, an employer can be hald liable for acts of sexual harassment pursuant to Subsection 40(4) if the employer knew or ought to have known of the sexual harassment and failed to take "...reasonably available means..." to penalize or prevent the conduct.

An employer can also be held liable for acts of sexual harassment under the organic theory of corporate liability. This theory states that where an employee is part of the directing mind of the organization, the corporation is personally responsible for the actions of that employee. To put it in more direct terms, the acts of that employee are the acts of the corporation.

The Supreme Court emphasizes in Robichaud v. Treasury Board that the purpose of human rights legislation is the removal of discrimination, rather than the punishment of anti-social behaviour. The motives or intentions of those who discriminate are not relevant because human rights legislation is concerned about the effects of discrimination rather than its causes or motivations.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal year 1987/88 marks the fifth year of implementation of the provisions of the Code relating to handicap. Recent amendments to the Code make it a violation to deny a person with a handicap employment, services, goods, facilities or accommodation because of a lack of access to premises or lack of appropriate amenities. It is now necessary to provide such access or amenities unless to do so causes undue hardship considering the cost, any outside funding and any health or safety requirements.

Although most complaints based on physical or mental handicap are now handled in the regions, the Unit for the Handicapped continues to perform a specialist and consultative role. The Unit handles systemic and complex complaints and issues relating to discrimination based on handicap.

The Unit recommends programs and policy in such areas as employment medicals, employment-related drug tests, issues relating to AIDS as an illness, absenteeism due to illness, dignity of risk and insurance coverage.

Although the past year has seen an unprecedented number of Boards of Inquiry on the ground of handicap, most of the Boards appointed have resulted in settlement prior to a full hearing.

Statistics on the total number of complaints received indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 41 per cent of all complaints filed during 1987/88.

ACTIVITIES 1987/1988

Complaints of Discrimination

During the period of April 1, 1987 to March 31, 1988 the Commission received 730 formal complaints. Over this period, 663 were closed with 452 settled, 98 dismissed by the Commission due either to lack of jurisdiction or lack of evidence to support the complaint, 14 were refused under Section 33 and 99 were withdrawn by the complainants.

Of complaints filed, 89 per cent were on the ground of physical handicap, 7.7 per cent were on the ground of mental handicap and 3.3 per cent related to claims under the Workers' Compensation Act. The types of handicaps are shown in the Statistical section of this Report.

The Commission examined such issues as visual acuity requirements, diabetes and epilepsy in the context of the physical standards for firefighters and police officers; the rights of persons with developmental handicaps in employment and education and the validity of strength tests in employee selection.

In their consultative role, the Unit staff assisted employers in their understanding of and compliance with the Commission's policy on drug and alcohol testing and testing for AIDS in the workplace.

Several cases resulted in precedent-setting Board of Inquiry decisions during the past fiscal year. A number of decisions are highlighted below.

The Board of Inquiry in Hickling, Horbay, Legris v. the Lanark Leeds and Grenville County Roman Catholic Separate School Board found that three "trainable mentally retarded" students were denied a full Catholic education because of mental handicap and that the Separate School Board had not made reasonable efforts to accommodate the three children.

The respondent appealed to the Divisional Court, which allowed the appeal and directed that the order of the Board of Inquiry be set aside. The Commission sought leave to appeal the Divisional Court's decision to the Court of Appeal and leave was granted.

In Choudhery v. the Ford Motor Co. of Canada Ltd., Mr. Choudhery, who has no vision in one eye, had applied for employment with the Company. He was interviewed and reported for a pre-employment medical. He was not hired until much later and alleged that this delay in hiring was primarily due to his handicap.

The respondent alleged that the company based its decision on a hiring policy under which the complainant was placed in the least preferred category, for reasons unrelated to his handicap.

Settlement efforts failed, and a Board of Inquiry was appointed on the basis of evidence that other individuals who applied for employment long after the complainant and who were within the same preferential hiring category, were hired before him.

The parties arrived at a settlement of $10,000 in general damages without prejudice to the respondent.

In Hajla v. Welland Plaza and Nestoras, a person with uncontrolled epilepsy alleged that she was denied service by the restaurant because of seizures. She was offered "take out" service only.

The Board of Inquiry held that the restaurant owner had discriminated against Mrs. Hajla because of her handicap, and ordered the respondents to offer equal access and treatment to the complainant, without discrimination because of handicap.

Another case that was settled before the Board of Inquiry convened involved Sylvain Côté v. l'Ecole Secondaire l'Essor in Essex County. Mr. Côté attended the school until his graduation in June 1987. He requires the use of a wheelchair. His school was not equipped with an elevating device and, as a result, in order to attend classes on the second floor, he had to leave classes ten to fifteen minutes early. He alleged that his right to equal treatment with respect to services was being infringed on the ground of handicap.

The respondents stated that they had made every possible attempt to accommodate Sylvain, but concluded that the expense to install an elevating device for one disabled student could not be justified. The evidence indicated that the respondent had adopted a policy that was not intentionally discriminatory, but had the effect of discriminating against persons with mobility-related handicaps.

The parties entered into a mutually satisfactory resolution prior to the hearing. The next student who needs an elevating device will be accommodated by the school board by means of an application to the Ministry of Education for the necessary funds.

Other cases settled at Boards of Inquiry during the fiscal year involved the following issues:

- Termination of employment while the complainant was receiving Workers' Compensation benefits;

- An employer's discriminatory assessment of the ability of a complainant with diabetes to drive a motor vehicle;

- An employer's assumption that a man with cerebral palsy could not perform the duties of a grocery clerk;

- Pre-employment medicals that screened out a hearing-impaired person and a person with a knee injury. Both were able to perform the essential duties of the job safely.

Public Education

The Unit continued to play a role in educating the public about the rights of persons with disabilities under the Code. Staff members participated in workshops, seminars, panel discussions and special events with a number of various groups, including the Handicapped Employment Program, the Workers' Compensation Board, Queen's University Law School, the Ontario Nursing Home Association, the Tri-Hospital Diabetes Education Centre, the Ontario Rehabilitation Workshop Council, the Centre for Independent Living in Toronto, the City of Ottawa Equal Opportunity Office, York University, Bellwoods Park House, Metro Toronto Separate School Board, Kingston General Hospital, the Personnel Association of Toronto, the Canadian Criminal Justice Association and Algonquin College of Applied Art and Technology.

In addition to providing public education, the Unit staff consulted with business, industry, unions, vocational associations, health care professional associations, consumer and advocacy groups and agencies throughout the province. Amongst those who consulted the Unit were the City of Toronto Employment Equity Office, the Canadian Hemophiliac Society, the Coalition on Pay Equity for the Handicapped, the Ontario Public Service Employees Union, Metro Toronto Community Services, Durham Region Social Services, York Finch General Hospital, the City of Hamilton, the Independent Committee for the Handicapped, the City of Scarborough, the Ontario Hospital Association, Northern Telecom, the City of Oshawa and Hay Management Consultants Limited.

Inter- and intra-governmental discussions were held with human rights commissions and other ministries, agencies and departments. The Ontario Ministry of Consumer and Commercial Relations, the Saskatchewan Human Rights Commission, the New Brunswick Human Rights Commission, the Alberta Human Rights Commission, the Ontario Ministry of Transportation and Communications and the Canadian Human Rights Commission are among the government agencies that have been provided with consultative services.

Staff Training and Development

The Unit provides consultations and training sessions on new policies, current issues and strategies for dealing with complaints on the ground of handicap.

As part of its community outreach program, as well as commemorating International Human Rights Day on December 10, community groups met with Commission staff from across the province to discuss human rights issues pertaining to handicap. Each group spoke about its purpose, function, particular involvement with disabled individuals, concerns about discrimination and their relationship with the Commission. These discussions will assist in providing effective service delivery to the disabled community.

The Unit for the Handicapped organized a staff training seminar on Acquired Immune Deficiency Syndrome (AIDS) for the development of appropriate responses to AIDS-related complaints under the Code. The seminar dealt with a wide range of issues concerning the disease, including its epidemiology, transmission of the virus, testing, insurance considerations, hemophilia, homosexuality, and related legal implications under the Code.

Program and Policy Development and Research

Having established a policy regarding employment-related medical examinations in 1985/86, the Commission reviewed employers' drug and alcohol testing within the context of that policy during fiscal year 1987/88. The Commission's policy on drug and alcohol testing was released in October 1987. A brochure explaining both policies is now available to the public.

Research is now being conducted for the development of policy and guidelines with respect to discrimination against persons with AIDS, with particular emphasis on services and employment.

Further information on these policies can be obtained from the Unit for the Handicapped.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1987/88

EMPLOYMENT

Race, Colour and Ethnic Origin

The complainant, a black man originally from Trinidad, alleged that he had applied for several promotional opportunities without success, and that these positions had been filled by white co-workers with fewer qualifications. The investigation disclosed that he did possess the skills and experience required for these supervisory openings to a greater degree than his white counterparts. The employer, a large manufacturing firm, did not post these vacancies since they were non-union jobs. The evidence supported the allegations.

In conciliation, the parties reached the following settlement:

- The complainant was placed in the next supervisory position for which he was qualified, at a starting salary of $5,372 more than he had previously earned;

- The employer changed its hiring policy to ensure that all bargaining unit positions are now posted;

- The employer provided the complainant and Commission with written assurances of its non-discriminatory policy and posted Code cards on the premises.

Race, Colour

A black woman alleged that she had been dismissed from her position as a laboratory technician because of her race and colour. She claimed that there had been no complaints about her work performance during her three years of employment, until a new supervisor joined the staff. The complainant alleged that the new supervisor criticized aspects of her work that she had been carrying out in accordance with the employer's policies.

During the investigation, the officer interviewed the complainant's former supervisor, senior managers and co-workers. They stated that the complainant's work performance had met existing standards and was equal to or better than that of the other laboratory technicians. Several other non-white employees believed that the new supervisor harboured negative attitudes towards blacks. The weight of the evidence supported the complaint.

The parties agreed to the following settlement in conciliation:

- The complainant received $4,784 in compensation for earnings lost as a result of the discriminatory conduct,

with the amount calculated on the basis of the salary she would have earned from the date of her termination to the date she began a new job elsewhere;

- The supervisor and director wrote a letter of apology to the complainant, as well as assurances of its policy of non-discrimination;

- The hospital implemented a policy against racial discrimination and racial harassment in the workplace, developed in co-operation with the Commission.

Harassment Because of Race and Ethnic Origin

The complainant, a clerical worker of East Indian origin, alleged that her supervisor had placed a written notice on her desk, containing racially derogatory slurs. She was so humiliated by the incident that she resigned from her job. Her complaint alleged harassment in employment because of her race, colour and ethnic origin.

During the fact finding conference, the supervisor admitted that the allegations were true. The parties agreed upon the following terms of settlement:

- The complainant received $2,500 in compensation for insult to her dignity and $636 as damages for lost earnings;

- She was sent a letter of apology and a positive letter of reference;

- The Commission reviewed written assurances of the employer's policy of non-discrimination and a directive to this effect was sent to all staff;

- The Commission conducted a seminar on racial and ethnic harassment and discrimination for all staff of the company.

Handicap

The complainant, a man with a lung disorder, alleged that he was refused employment in an entry-level position with a manufacturing firm, despite assurances from a thoracic specialist that his condition would not undermine his ability to perform in the job. His complaint alleged discrimination in employment because of handicap.

The officer obtained medical evidence indicating that the complainant could have performed the duties of the job at no risk to himself or to others, and with no requirement on the employer's part to modify the job duties in any way. The investigation revealed evidence in support of the complainant.

In conciliation, the parties agreed to the following terms of settlement:

- The complainant was paid $1,679 in compensation for lost earnings;

- The employer revised its policy regarding medical records and methods of screening job applicants to ensure conformity with the provisions of the Code.

Handicap

The complainant, who had worked for the respondent company for 14 years, alleged that she was laid off one week after informing her supervisor that she would be off work for six to eight weeks because she required surgery. Her complaint alleged discrimination in employment because of handicap.

During the fact finding conference, the employer advised that there had been no problems with the complainant's work performance or attendance during the course of her employment. The evidence supported the complaint.

In conciliation, the parties negotiated the following settlement:

- The complainant, who did not seek reinstatement, was paid $1,400 as compensation for lost earnings and $600 as damages for insult to her dignity;

- The respondent revised its application form and medical policy to ensure compliance with the provisions of the Code;

- The Commission received written assurances of the company's non-discriminatory policy, and the respondent posted Code cards at all of its locations in Ontario.

Handicap

The complainant, a sanitation worker in a manufacturing plant, had requested a transfer to another section because of his allergy to dust. He alleged that his request was denied and that he was dismissed because of his allergy. He also claimed that he applied for a promotion and was unsuccessful. His complaint alleged discrimination in employment because of handicap.

The investigation revealed that although the employer had tried to accommodate the complainant, he lacked the qualifications for positions in dust-free areas of the office and stockrooms. The Commission reviewed the investigation findings and decided to dismiss the case. The parties were provided with the following reasons in writing:

> The investigation findings did not support the complainant's allegations of discrimination on the basis of handicap. The findings indicated that, because of the complainant's allergic reaction to dust, he was unable to continue performing the essential duties of the job he was hired for and there were no other areas of the plant where he could be placed that were both consistent with his qualifications and sufficiently dust-free.

The complainant then applied for a reconsideration of this decision under Section 36 of the Code, and maintained that he should have been moved to an alternative work-site. Following its review, the Commission decided to affirm its original decision and notified the parties as follows:

- Regarding the machine shop area, the complainant is not a certified machinist and did not have sufficient seniority to be placed in that department, a fact which was confirmed by the union representative. In addition, the dust level in that area is no less than in the other areas where the complainant had worked and experienced allergy problems.

- The same problems exist with respect to a placement in the shipping department.

- With regard to the position as stockroom clerk, although the complainant had nine days of seniority, the successful candidate had superior education and experience. Furthermore, the same problem of dust levels exists in that area.

- The evidence indicated that the respondents did try to accommodate the complainant by way of alternative employment, but could not do so given his skills and seniority.

- Other employees with medical problems have been accommodated by the company when alternative positions were available and it was possible to do so.

- At the time the complainant was hired, the respondents were aware of his difficulties with allergies, yet offered him employment in any event.

Ethnic Origin

A man of Egyptian origin had applied for the position of senior laboratory technician with a clinic. He alleged that he was interviewed but was not successful, and was not given a satisfactory explanation as to why his qualifications were not acceptable. He was concerned that some of the interview questions stressed such characteristics as interpersonal skills and ability to work under pressure. Since the complainant viewed these questions as indirectly discriminatory against immigrants, he filed a complaint alleging discrimination in employment because of place of origin and ethnic origin.

The investigation disclosed no evidence in support of the allegations. The Commission reviewed the findings and dismissed the case, providing the parties with the following reasons:

The evidence indicated that:

- The complainant was subjected to the normal process of preliminary screening of applicants. He was granted an interview by a personnel officer on the basis of his

qualifications as noted on his application. He was not referred for a further interview because the personnel officer felt that he was unresponsive to questions about his work experience and qualifications as they relate to the position.

- The respondent nevertheless provided the complainant with an opportunity to meet the hiring manager. This meeting was a job interview as there was another position coming available. The complainant was asked a basic question about knowledge associated with laboratory training, which was posed to all of the applicants, but which he could not answer. Furthermore, the physician in charge of the laboratory found the complainant unresponsive to questions about the quality of his work and training which caused concerns about its acceptability.

- The complainant was told by the respondent that on-the-job training would take two years and that his credentials would have to be verified if he was offered a position. All of the applicants are similarly advised.

- Interviews with the successful applicants disclosed that one of them was Egyptian, as was the complainant. The ethnic composition of the successful applicants and the laboratory staff was diverse.

Sex

The female complainant alleged that she was refused a position as a sales representative by the respondent because of her sex. She claimed that it was company practice to recruit sales representatives internally, from the ranks of driver/merchandizers, an entry-level position in the respondent company. Traditionally, driver/merchandizers tended to be males.

During the investigation, the officer confirmed that the position of driver/merchandizers was treated as an apprenticeship for employees who wanted to advance to more senior positions, including those in sales. The physical demands of the driver/merchandizer position are considerable and operated as a systemic barrier to women who wanted to compete for the more lucrative jobs available in the company. The officer examined the complainant's qualifications and experience and learned that they were more than acceptable for a sales position. The evidence supported the complaint.

In conciliation, the following terms of settlement were agreed to:

- The complainant applied for and was accepted in a sales position, served her probation period and was placed on permanent status;

- The respondent eliminated the requirement that applicants for sales positions must be drawn from the ranks of the driver/merchandizers.

Sex (Pregnancy)

The complainant had been employed as a computer trainer at the respondent company for a month when she became pregnant. She alleged that when she advised her employer of this, he terminated her services on the grounds that it would not be in the company's best interests to train her when her maternity leave was due to begin in seven months. He added that although the complainant intended to return to work after her leave, she would likely experience problems in locating baby sitters or daycare. She filed a complaint alleging discrimination in employment because of sex, which includes pregnancy under the Code.

After the fact finding conference, the parties negotiated a settlement of the complaint. The complainant received $2,500 in compensation for mental anguish and the employer advised all staff of the company's non-discriminatory policy.

Sex (Pregnancy)

The female complainant alleged that she was denied a merit increase because she had become pregnant and would be on maternity leave for part of the fiscal year. Her complaint alleged discrimination in employment because of sex.

The investigation revealed that the complainant's work performance had been excellent, both during the current year and in the past. Other employees with similar work records had received the raise.

The parties agreed to settle the complaint on the basis of payment to the complainant of $750, representing the amount of her merit increase.

Sexual Harassment

The complainant alleged that she had been the victim of verbal and physical sexual harassment from a male co-worker. She stated that she had informed several managers of the problem, but no action had been taken. She resigned her position as a result of the harassment. The corporate respondent claimed that he had been made aware of the problem too late to take corrective action.

During the investigation, the officer interviewed several supervisory employees and co-workers, all of whom confirmed that the complainant had told them about the incidents. Two co-workers had witnessed the personal respondent's offending behaviour towards the complainant. One of these witnesses said she had reported it to a senior manager several weeks before the complainant left the company. The weight of the evidence revealed support for the allegations.

In conciliation, the parties reached the following settlement:

- The complainant received $2,750 in compensation for insult to her dignity. Since she had located another position, she did not request damages for lost earnings.

- The corporate and personal respondents wrote a letter of apology to the complainant and provided the Commission with written assurances of its policy against sexual harassment;

- The corporate respondent developed a written policy on workplace harassment and a procedure for resolving complaints from employees.

Sex

A female hotel employee alleged that she had been denied promotions to supervisory positions over a period of several years, because of her sex. She claimed that she had been passed over in favour of males with inferior qualifications.

However, the respondent requested the Commission not to deal with the complaint under Section 33 of the Code. This section provides that the Commission may refuse to deal with a complaint if it is not within its jurisdiction; is trivial, frivolous, vexatious or made in bad faith; the facts on which it is based occurred more than six months before it was filed; or there is a procedure under another Act that is more appropriate in the circumstances.

Following a preliminary review of the matter, the Commission decided not to deal with the case and advised the parties of the following reasons:

- The alleged discriminatory conduct had been the subject of an earlier arbitration hearing. The human rights complaint contained no allegations that had not been dealt with in that forum.

- Most of the alleged events had occurred four years previously. The respondent would be substantially prejudiced if the complaint were proceeded with, because many of the witnesses and documents would no longer be available.

- The arbitrator's findings with respect to the complainant's credibility supported the respondent's view that the complaint had been made in bad faith.

Creed

The complainant, who is Jewish, alleged that her employer had refused her request for two days of leave without pay to observe the high holidays of Rosh Hoshanah and Yom Kippur. Her complaint alleged discrimination in employment because of creed.

During the fact finding conference, the respondent stated that the denial was based on a policy that leave without pay cannot be taken until all unused vacation credits have been used up. The officer advised company representatives of their obligation to make reasonable efforts to accommodate the religious obligations of their employees, short of undue hardship.

The complaint was settled on the basis of the following:

- The respondent reinstated the complainant's vacation credits that she had used for the two days in question, by allowing her to forego two days' wages;

- The employer changed its policy to ensure compliance with the provisions of the Code.

Sexual Orientation

The complainant, a gay male, alleged that he was dismissed from his employment as a waiter because of work performance problems that went unnoticed among heterosexual employees. His complaint alleged discrimination in employment because of sexual orientation.

At the fact finding conference, the complainant reported that his manager and many of his co-workers had made negative comments about his homosexuality. He claimed that these negative attitudes created a climate in which he could not be treated fairly by his manager and other employees of the respondent. The evidence tended to support the allegations.

In settlement, the respondent agreed to pay the complainant $200 as damages for insult to dignity. He sought no compensation for lost earnings as he had found another job immediately. The respondent terminated the employment of the manager who had been responsible for the discriminatory treatment.

ACCOMMODATION

Race and Colour

A white woman alleged that she bought a trailor which was located on site in a trailor park, and made arrangements with the manager to return at a later date to have it hooked up to the utilities. She returned to the park with her daughter and son-in-law, who is black, and approached the office. The manager's wife asked them to come back at the end of the day, when her husband would be home.

The manager later told the complainant that the previous owner of the trailor had no right to sell it on site, and that the site had been promised to someone else. Detecting a note of insincerity in his explanation, the woman asked if it had anything to do with her son-in-law's race and colour. The manager replied that it did, and that residents of the trailor park would object if a site were rented to a black person. The woman's complaint alleged discrimination in accommodation because of race and because of her association with a member of a group covered by the Code.

In responding to the complaint, the manager said that he was displeased about the sale of the trailor because he had not had an opportunity to screen the prospective purchasers.

The Commission interviewed the man from whom the complainant had bought the trailor. He stated that the manager had revealed a dislike of black persons, and had approved of the sale as long as he thought the purchaser and her family were white.

After the fact finding conference, the parties agreed to settle the complaint on the basis of a payment to the complainant of $1,395 representing damages for mental anguish and compensation for the out-of-pocket expenses she incurred as a result of the discriminatory act.

Marital Status

Two unmarried persons alleged that they were refused an apartment because the landlord followed a "minimum income" policy that each of them was required to meet. They claimed that married couples were assessed on the basis of their combined incomes. They alleged discrimination in accommodation on the basis of marital status.

The case was dealt with under the priority case handling method. The officer contacted the landlord, and was informed that the policy was based on the assumption that unmarried tenants were more unstable than their married counterparts. When the landlord was advised about the provisions of the Code relating to marital status, he agreed to amend the policy to assess ability to pay the rent on the basis of a minimum combined income, for both married and unmarried applicants. The application was accepted and the parties expressed their satisfaction with this resolution.

Family Status

A couple with one child alleged that they were refused an apartment because of their family status, which is defined in the Code as being in a parent-child relationship.

The case was resolved under the priority case handling process. The respondent confirmed that the application was not considered because of an "adult only" policy.

In resolution of the matter, the landlord agreed to abandon the policy and to notify his building managers that no applicants can be turned down because they have children. The couple's application was accepted and they were given the opportunity to rent the next available apartment.

Receipt of Public Assistance

The complainant, who was in receipt of Worker's Compensation benefits, alleged that she was refused rental of an apartment because she was unemployed. Her complaint alleged discrimination in accommodation because she was in receipt of public assistance.

During the fact finding conference, the landlord admitted that he preferred to rent to persons who were employed. The complainant produced documentary evidence that the rental was well within her means.

In conciliation, the landlord agreed to compensate the complainant in the amount of $460, representing her out-of-pocket expences, and to assess ability to pay the rent on the basis of income from any and all sources. The complainant expressed her satisfaction with this outcome.

GOODS, SERVICES AND FACILITIES

Handicap

The complainant, a man with arthritis, alleged that his application for mortgage insurance was refused because of his medical condition. He had been required to

report his medical history on the insurance carrier's application form. His complaint alleged discrimination with respect to services because of handicap.

During the fact finding conference, the complainant stated that he had offered to provide a statement from his physician that his condition would not undermine his ability to comply with the terms of the insurance contract, but this offer was rejected. The respondent agreed, in conciliation, to abandon the offending policy, revise the application form and re-evaluate the complainant's application. The application was accepted and the case was settled on this basis.

Race, Colour and Ancestry

The complainant, who is a Native Canadian student, alleged that one of his teachers frequently made derogatory comments about Native persons during class. He alleged discrimination with respect to services and facilities because of race, colour and ancestry.

The investigation confirmed the allegations on the basis of the testimony of students who had witnessed the teacher's behaviour. The head of the department ordered the teacher to apologize to the complainant at the beginning of class, in front of the other students. The teacher was warned by senior respondent officials that his conduct was unacceptable and contrary to the Code. The complainant indicated his satisfaction with this resolution.

EMPLOYMENT

Sex, Sexual Harassment

Anderson v. The Canadian Tire Corp. and Bianchet

Refusing to grant a job interview because of the sex of the applicant was found to breach the Code.

The complainant had responded to an advertisement for a job as a painter at the Canada Employment Centre. The only stated criteria for employment were "some experience" in painting and a willingess to "train on the job." She was, however, refused an interview with the Taro Painting and Decorating Division although she had the requisite experience and willingness to train. Feeling that such a job was not "traditional" for a woman, the respondent would not interview Ms. Anderson.

The respondent claimed that his refusal to consider Ms. Anderson for the job was not because of his personal sentiments with regard to hiring women, but rather because of the "hostility" that would have erupted from the male employees had he done so.

He pointed out that there were a large number of workers on the project whose behaviour he could not control. He feared that he might be held responsible for their conduct, whether it be rough language in the presence of a woman or possible harassment of a woman employee.

Although the Board found that the respondent had a "decent concern" for the well-being of the complainant, this was offset by the stereotyping of a woman employee as being unable "to fit in and look after herself."

The respondent also argued that he had not violated the Code, as Section 23(b) was applicable in the circumstances. This section provides that sex can be a bona fide qualification because of the nature of the employment. However, the Board stated that this provision is only applicable to the type of employment where certain characteristics bear some relationship to the individual's ability to perform the job in question. This was not the case with regard to the circumstances before the Board.

Although it was recognized that the situation in which the respondent found himself was a difficult one, an employer must take measures to prevent discrimination in the workplace and must not engage personally in discrimination in order to prevent a problem from arising in the future. The Board stated that "reasons of the actual or feared conduct of other employees toward an employee or prospective employee cannot justify discrimination against that person."

The Board held that the complainant was entitled to compensation for the lost employment opportunity, and Taro Painting Division was ordered to compensate the complainant in the amount of $862 for lost wages.

Blanchette v. Maninos Investments (Sault) Ltd., carrying on business as Super Submarine and Donuts

Mr. Blanchette had applied for employment as a waiter, in response to a newspaper advertisement which stated, "Waitress or waiter needed." He and his female cousin both testified that she also applied for the position, and was called for an interview. When Mr. Blanchette telephoned the restaurant to inquire why he had not been contacted, he was told that "we only hire females here."

On the basis of the evidence before it, the Board found that the respondent had adopted a policy of not hiring men, after his negative experience with two males whom he had hired several years before. The Board concluded that the respondent rejected Mr. Blanchette's application because of this policy.

Having found discrimination contrary to the Code, the respondent was ordered to pay to the complainant $500 as damages for loss of opportunity to be considered for employment, $500 as damages for mental anguish and $195 in interest. The respondent was also ordered to provide written assurances of its future compliance with the Code to the complainant and Commission, and to post Code cards in a conspicuous location in both of its outlets.

Riggio v. Joseph's Coiffures and Vitale

Ms. Riggio claimed that her employment as an aesthetician was terminated because she was pregnant. Her complaint alleged discrimination in employment because of her sex.

In her testimony, Ms. Riggio stated that the attitude of her employers towards her cooled after she told them about her pregnancy. Several weeks later, she was given one week's notice of dismissal.

Mr. Vitale, manager of the salon, testified that the significant problem with the complainant's employment as an aesthetician was that she was not able to develop a large enough clientele to make her position economically viable. He stated that she made no effort to attract new clients by advertising her services.

The Board of Inquiry found, on the basis of the evidence, that these concerns were legitimate. However, the respondent did not warn Ms. Riggio that her employment was in jeopardy before her dismissal.

The Board also concluded that Ms. Riggio's pregnancy was a factor in the decision to terminate her services, because Mr. Vitale said that he became aware of her pregnancy a week before he spoke to her about termination. He also admitted having concerns about Ms. Riggio's attendance throughout her pregnancy.

Having found a breach of the Code, the Board ordered the respondents jointly and severally to pay Ms. Riggio $726 to compensate her for lost earnings and $375 as damages for mental anguish.

Wiens v. Inco Metals Co., Ontario Division

Ms. Wiens had worked at Inco's Copper Cliff nickel refinery since 1974. Although she had repeatedly sought a transfer to the company's "Inco Pressure Carbonyl process" (IPC) sector, she was denied the opportunity because of a policy excluding women of child-bearing age from that sector.

Inco adopted the policy on the recommendation of its medical officer, who relied on scientific literature in giving this advice. The IPC process recovers pure nickel from a variety of nickel-bearing materials. Two toxic gases are formed during the process — nickel carbonyl and carbon monoxide.

Respondent representatives testified that several safeguards ensure that IPC employees are not exposed to harmful levels of these gases. They nevertheless stated that certain areas of the plant containing small concentrations of nickel carbonyl are considered hazardous to the unborn fetus. Moreover, they asserted that the fetus is not affected by having been conceived by sperm from a male who has been exposed to the toxic gas; hence, the policy applies only to women.

Inco's concern was in respect of the impact of carbonyl gas upon a fetus. The company agreed that if a female employee at the IPC became pregnant while working there, she could be accommodated throughout the rest of her pregnancy by working elsewhere in the company. However, Inco's concern was that an embryo might be exposed to the carbonyl gas before the employee realizes she is pregnant.

Expert witnesses called by the Commission countered the respondent's testimony by arguing that the exclusionary policy was based on inconclusive evidence. They stated that the risk of harm from exposure is slight, and did not warrant the requirement that women must be sterile or post-menopausal to work in the IPC.

The Board found that the exclusionary policy constitutes discrimination on the basis of sex. The conclusion was based on two main facts: the ability to get pregnant is the primary difference between women and men, and not every member of the class needs to be discriminated against for there to be discrimination against the class as a whole.

The exclusionary policy did not constitute a reasonable and bona fide job qualification, in the view of the Board, because it bore no relation to the complainant's ability to perform the job; her personal safety or the safety of her fellow employees and the general public was not in jeopardy; and the risk to a fetus was minimal or insignificant. The Board stated that it is more in keeping with equality objectives to allow the individual the informed choice of accepting the very slight risk or rejecting the very slight risk in favour of alternative employment.

Having found discrimination contrary to the Code, the Board ordered as follows:

- The respondent was to provide, as quickly as possible, the complainant with all the additional training (the second stage training) necessary to qualify her for employment in the IPC section of its operations at its Copper Cliff nickel refinery. Upon successful completion of such training, the complainant was to be awarded the first available employment position in the IPC, excluding any consideration of seniority and notwithstanding any provisions of any Collective Bargaining Agreement.

- The respondent was to discontinue its policy of excluding women of child-bearing potential from the IPC sector of its operations at its Copper Cliff nickel refinery.

Green and Swan-Sheehan v. City Auto Recyclers and Sales and Safieh

The two female complainants alleged that Mr. Safieh, the co-owner of City Auto, sexually harassed them during their employment and took reprisal actions against them because they refused his advances.

Several witnesses supported these allegations as they had observed the harassment. There was also evidence that other women had been subjected to harassment. The respondent denied the allegations.

Both complainants stated that the sexual advances had caused them to become ill with a nervous disorder. One of them dropped in weight from 126 pounds to 100 pounds during the period of her employment. They testified that jobs were very scarce in the town, and they could not afford to resign from City Auto. Eventually, they were able to locate other employment and left the company.

The Board found the allegations to be supported by the evidence, and ruled that both the company and Mr. Safieh were liable for the offending conduct. Since Mr. Safieh was part of the "directing mind" of the corporation, the company was also found personally liable on the organic theory of corporate responsibility.

Both respondents were ordered to pay Ms. Green $4,171 representing $440 in lost earnings, $3,000 in damages for mental anguish and $731 in interest. Ms. Swan-Sheehan was awarded $1,818.75, of which $1,500 represented damages for mental anguish and $318.75 was interest.

Sharp v. Seasons Restaurant and Aleksovski

Ms. Sharp had worked evening shifts as a waitress, reporting to Mr. Aleksovski. She alleged that he began harassing her sexually several weeks after she began her employment, particularly after he had been drinking alcohol. When she told him to stop the behaviour, he laughed at her.

At the hearing, two other former waitresses at the Seasons Restaurant testified that they had experienced similar physical advances. One of them said she had witnessed Mr. Aleksovski harassing Ms. Sharp on several occasions.

In his testimony before the Board of Inquiry, Mr. Aleksovski denied the allegations and claimed that Ms. Sharp frequently gave him rides in her car. However, Ms. Sharp stated that Mrs. Aleksovski babysat her young son in her own home, and Ms. Sharp would drive Mr. Aleksovski to work after dropping her little boy off in the mornings.

Mr. Aleksovski also testified that Ms. Sharp had quit her job, but returned to work after two days. Ms. Sharp maintained that although she felt degraded and ashamed by her employer's conduct, she remained in the job because her husband had recently started a new business and they needed her income. Ms. Sharp eventually quit after three months of employment.

The Board found in favour of Ms. Sharp, basing its decision in large part on the testimony of the two former waitresses.

Having found that discrimination contrary to the Code had occurred, the Board ordered that:

- Mr. Aleksovski pay to Ms. Sharp $1,500 as damages for lost wages, $2,000 in compensation for mental anguish and $805 as interest.

- Mr. Aleksovski post a Code card in the Seasons Restaurant; and

- Mr. Aleksovski notify the Commission in writing each time a female employee leaves Seasons Restaurant within a two-year period from the date of the Board's decision. The notification must include the employee's name, address, period of employment and reasons for termination.

The respondent's appeal from this decision was dismissed by the Court.

Race, Ethnic Origin, Handicap, Family Status

The Liquor Control Board of Ontario and Parker v. Ontario Human Rights Commission, Karumanchiri, Ng and Yan

In an unanimous decision, the Divisional Court upheld the finding made by a Board of Inquiry that the Liquor Control Board had discriminated against Alexander Karumanchiri, Eric Ng and Joseph Yan on the basis of race, colour, ancestry, place of origin and ethnic origin in the awarding of two promotions in its laboratory services. The Board had found that the complainants were better qualified than another candidate who had been successful in receiving a promotion, first to the position of Assistant Chief Chemist and subsequently to the post of Director of Laboratory Services.

Of particular significance in this case is that aspect of the Board decision which ordered that Mr. Karumanchiri be placed in the position of Director of Laboratory Services. In upholding the order of the Board to place Mr. Karumanchiri in the position he had originally been denied, the court stated, "the provisions of the Code should be accorded a broad and liberal interpretation in order to, as far as possible, remedy the effects of or prevent discrimination."

The court also upheld the Board's finding that Messrs. Ng and Yan were subjected to reprisal as a result of filing complaints against the L.C.B.O.

Lee v. T.J. Applebee's Food Conglomeration and Simpson

Ms. Lee, who is of Chinese ancestry, was employed in the kitchen of the respondent restaurant. The staff of approximately 120 worked in two different locations: the kitchen and the "front of the house," where hosts, waiters, waitresses, bus boys and bartenders had direct contact with the public. The latter jobs are more prestigious and bring higher pay.

Ms. Lee alleged that she applied for transfers to a waitressing job on several occasions but was denied them because of her race and colour. She testified that white kitchen employees were advanced to the front of the house while racial minorities were not.

The respondent found her to be highly competent in her work as a baker, and claimed she was too valuable in that position to be transferred.

Several witnesses testified that the senior manager and many co-workers frequently made racial slurs and derogatory remarks about, and to, members of visible minorities.

The Board concluded, on the evidence before it, that while Ms. Lee had not been held back for racially motivated reasons, the workplace was a racially poisoned environment. Moreover, an overwhelming percentage of the waiters and waitresses were white. Despite the general manager's knowledge of the racial epithets, he did not make reasonable efforts to stop them. The Board found that Ms. Lee's eventual decision to resign her position was influenced in part by these circumstances.

Having found a violation of the Code, the respondent restaurant was ordered to:

- hold, at the direction of the Commission, a staff seminar on the provisions of the Code, especially with regard to creating a work environment free of discriminatory language and practice;

- post Code cards in full sight of the employees in the restaurant;

- report to the Race Relations Directorate what steps have been undertaken to attract and engage members of minority groups for front-of-the-house positions, especially waiting jobs. If the conditions that prevailed in 1985 still exist, steps must be taken to promote adequate and feasible redress.

Also, the Commission was advised to request the Board Chairman to take further action, if necessary. The Board will remain seized of the matter for two years.

Rampersad v. Vintage Grand Touring Automotives, Spagnuolo and Witte

Mr. Rampersad, a black man of East Indian ancestry originally from Trinidad, alleged discrimination in employment on the basis of his race, colour, ancestry, place of origin and ethnic origin when his employer hired less competent white individuals for a supervisory position without giving either Mr. Rampersad or another black co-worker an opportunity to fill the position.

Mr. Rampersad worked in auto body repair, prepping and painting cars. He had experience in both areas with previous employers as well as with the respondent. Despite this experience and his unquestioned competence, he claimed that the company saw fit to hire less competent white individuals and put them in charge of the painters, including Mr. Rampersad.

Because the head painter was assigned all the painting, the other workers were restricted to prep work, with lower pay.

Finding no discriminatory intent on the part of the company's owner, Mr. Witte, the Board of Inquiry dismissed the complaint against him. The Board found that Mr. Spagnuolo, the foreman, as the employment gatekeeper, had discriminated against Mr. Rampersad in unjustifiably hiring less qualified white individuals and putting them in charge of the painters.

The Board inferred from the evidence that the foreman's view of blacks and his discomfort in working with them led to the complainant's exclusion based on improper and unlawful considerations.

The company and Mr. Spagnuolo were ordered jointly and severally to pay Mr. Rampersad $1,441.36 in compensation for lost earnings, $500 in general damages for mental anguish and $364.80 as interest.

Horton v. The Regional Municipality of Niagara, Odell and Orvidas

Ms. Horton was dismissed near the end of a two-month probationary period as a health care aide in a senior citizen's facility operated by the respondent municipality. She was advised that the dismissal was based on her medical record, which revealed both hypertension and obesity. Her complaint alleged discrimination in employment because of handicap.

The Board of Inquiry declined to decide whether obesity is a handicap within the meaning of the Code, because it lacked information on which to determine that the obesity was or was not caused by birth defect or illness, as stipulated in the definition of "handicap" in the Code. The Board ruled that hypertension is a handicap under the Code.

The respondent had indicated that Ms. Horton's handicap was a factor in the decision not to continue her employment, and did not claim that the hypertension prevented her from doing her job adequately. The respondent, therefore, did not claim that the absence of hypertension was a bona fide occupational qualification for the job of health care aide. The Board rejected an argument from the respondent that Ms. Horton would have been dismissed in any event because of her poor work record. The Board stated that even if a breach of the Code is only one among other causes leading to the action in question, the entire action is tainted.

Having found a breach of the Code, the respondent was ordered to compensate Ms. Horton in the amount of $2,032.80 for lost earnings, $750 for mental anguish and $862.66 in interest.

Broere v. W.P. London and Associates, Ltd., McConvey and Brooks

Mrs. Broere was dismissed shortly after her return to work after a maternity leave. She alleged that the dismissal was based on her family status in that a contributing factor to the layoff was the birth of her child.

There was no dispute that legitimate business reasons prompted a series of layoffs among clerical workers at the company. There was also agreement that Mrs. Broere's work performance had been excellent.

Mrs. Broere testified that a senior officer told her that "since you have a child at home...we assume you will leave sooner than the other employees to look after her." She said she was informed that the company was looking for people who would work on a long-term basis.

The Board of Inquiry heard evidence that five other clerical workers were laid off at around the same time as Mrs. Broere. Four of them had recently returned from maternity leave. One of these women testified that she had asked a senior manager if the fact that she had two children had anything to do with her layoff, and he replied that this was a factor in the company's decision.

Although the Board was satisfied that the primary reason for Mrs. Broere's dismissal was a legitimate reduction of personnel, it found that one of the factors in deciding which employees to retain was the ages and numbers of their children.

In finding that discrimination had occurred, the Board ordered that Mrs. Broere be compensated for her loss of income for the period of her layoff and $500 in compensation for mental anguish.

Szabo v. Atlas Employees Welland Credit Union

Mr. Szabo alleged that the respondent refused to consider his application for employment as a loan officer because his father, William Szabo, was an employee of the Atlas Steel Company, and a member of the Supervisory Committee of the respondent. A personnel guideline in effect for more than 30 years prohibited the respondent from employing relatives, including those in a parent-child relationship. Mr. Szabo's complaint alleged discrimination in employment because of family status.

The only defense available to the respondent is contained in section 23(d) of the Code, which provides that an employer may grant or withhold employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee.

The respondent maintained that the guideline is in wide use by credit unions. It is designed to prevent conflicts of interest in institutions that have closed memberships, and where the members, by law and in fact, both own and control the institutions.

However, the Commission took the position that there is no bona fide occupational defence available for discrimination on the basis of family status.

The Board considered the nature of the respondent for the purpose of determining whether William Szabo would either have been an employer or an employee of his son, Paul, within the meaning of the defence set out in Section 23(d) of the Code.

The Board found that the Credit Unions Act calls for the separate incorporation of a credit union. It is no way controlled by the entity serving as its bond of association (in this case, Atlas Steel). The respondent stands as a separate entity from the steel company, both in law and in fact.

In addition, the Board found no basis in law for concluding that William Szabo, as a member of the Supervisory Committee, can be described as an employer or employee of the respondent.

In the result, the Board held that the defences of Section 23(d) did not apply to the respondent, and, accordingly, a breach of the Code had occurred.

The Board ordered the respondent to cease discriminating in employment on the basis of family status. In this regard, the exceptions set out in Section 23(d) of the Code would remain available to the respondent. However, neither employees of Atlas Steel Company nor members of the respondent Board of Directors, its Credit Committee or its Supervisory Committee were to be considered employees or employers within the meaning of Section 23(d) of the Code.

In addition, the respondent was ordered to pay the complainant $625 in lost earnings, $1,137.46 to compensate for his travelling expences, interest on this amount and his legal fees.

GOODS, SERVICES AND FACILITIES

Handicap, Sex, Ancestry

The Lanark, Leeds and Grenville County Roman Catholic School Board v. The Ontario Human Rights Commission et al.

The Divisional Court of the Supreme Court of Ontario overturned a decision of a Board of Inquiry which had ruled that the School Board discriminated against three mentally handicapped students in not providing them with an educational program in the Separate School system. The School Board had argued that it is not equipped to handle mentally handicapped students, and therefore "contracts out" and pays the public school board to provide educational services for these students.

The Board of Inquiry had found that this practice was discriminatory in that the three students were being denied a Roman Catholic education because of their handicap. It also ruled that the School Board did not make reasonable efforts to accommodate the students, short of undue hardship.

In its appeal from the Board of Inquiry decision, the School Board argued that they had not discriminated against the students, relying on the defence available within Section 16 of the Code. This section provides that the Code is not infringed when the premises and services lack the amenities that are appropriate for the person because of his or her handicap.

The Court supported the respondent's position and overturned the earlier finding of discrimination. An additional reason for the Court's decision is that the complaint was filed at a time when the respondent School Board could not, without a special Order-in-Council, register the three students or assume control over their education.

Pinder v. Argus Seafood and Steak House, Simos

Ms. Pinder, who is blind, alleged that she was refused entry into the respondent restaurant because she was accompanied by a dog guide.

The parties settled the complaint before a Board of Inquiry hearing was convened. The Board issued the following order based on the agreed-upon settlement.

- The respondents were to provide a letter of assurance to the Commission stating that they will abide by the provisions of the Code and will not discriminate against individuals who, because of blindness or visual impediment, are dependent on a dog guide;

- the respondents were to post a Code card in a conspicuous place and in public view;

- the respondents were to provide the complainant with a letter of apology;

- the respondents and the staff of Argus Seafood and Steak House were to attend a workshop conducted by a representative of the Commission;

- the respondents were to pay to Ms. Pinder $1,000 in general damages for the insult to her dignity arising from the incident.

Blainey v. The Ontario Hockey Association, The Metropolitan Toronto Hockey League et al.

A Board of Inquiry ruled that Justine Blainey was treated unequally and discriminated against because of her sex when she was declared ineligible to play on an all-male hockey team, the Etobicoke Canucks. Justine, who was 13 at the time, had been successful at a tryout and was offered a position on the team. The team is affiliated with the Metropolitan Toronto Hockey League (MTHL), which is a member of the Ontario Hockey Association (OHA). It is OHA policy that females must play on female teams, except when they are under 12 and there is no local Ontario Women's Hockey Association team on which they can play.

Section 1 of the Code provides the right to freedom from discrimination in services, goods and facilities because of sex, among other grounds. However, amateur athletics were excepted from this provision by Section 19(2), at the time of Justine's original complaint.

Justine applied to the courts for a declaration that Section 19(2) of the Code was contrary to the equality rights provisions of the Canadian Charter of Rights and Freedoms, and the Ontario Court of Appeal upheld the challenge. The Commission then proceeded with her complaint and referred it to a Board of Inquiry.

Section 19(2) has since been repealed, and the Board of Inquiry ruled that discrimination on the basis of sex in athletic activities is now unlawful in Ontario, unless such activities qualify as special programs (affirmative action), which are permissible under the Code.

The Board held that the program offered by the Ontario Women's Hockey Association qualifies as a special program, since it is designed to assist females, a disadvantaged group where opportunities to play hockey are concerned. However, this did not mean

that all female players must be confined to the OWHA: they have the option of playing on a male team.

During the hearing, the Board heard the evidence of medical experts and athletes, who testified that prior to reaching puberty, the average girl can compete successfully in contact sports with prepubescent boys of the same age. At age 14 or 15, however, males become heavier and stronger, and on average enjoy a competitive advantage over females in such sports. There is still considerable overlap between the sexes, with some post-pubescent female athletes being able to compete successfully against their male counterparts.

The Board ordered that Justine be given an opportunity to try out for a team of her choice and receive a position if she qualifies.

The OHA, MTHL and Ontario Women's Hockey Association (OWHA) were ordered not to interfere with Justine's right to compete for and be awarded a position equally with males. The OHA and MTHL were barred from restricting in any way the participation of females in hockey on an integrated basis.

The Board further ordered that the OWHA be declared an affirmative action program as defined by the Code to enable the organization to limit eligibility to females.

All OHA, MTHL and OWHA public offices in Ontario must display posters provided by the Commission affirming their policy of non-discrimination.

Rossetti and Lanigan v. Montgomery, Lawless and Leclaire

Ms. Lanigan and Mr. Rossetti, who are Native Canadians, were refused service at an Ottawa bar located in the building where they worked as Federal Government employees.

They testified that the waitress who took their order spoke with Mr. Leclaire, the manager, before placing the order with the bartender, Mr. Lawless. In his own testimony, the bartender said the waitress asked him, "What am I going to do? Reg (Leclaire) won't let us serve the Indians." The bartender questioned Mr. Leclaire about the matter, protesting that the policy shocked him, particularly since Mr. Rossetti and Ms. Lanigan had always been good customers. Mr. Leclaire was unmoved. The bartender reluctantly informed Mr. Rossetti and Ms. Lanigan that he had been instructed not to serve them because of a policy not to serve Native people. He testified that he had been faced with complying with Mr. Leclaire's instructions or losing his job.

The complainants and a colleague then contacted Mr. Montgomery, owner of the bar, but his response was totally unsympathetic, and the Board found that he was arrogant and indifferent to suggestions that recourse might be sought through the Human Rights Commission.

In finding that unlawful discrimination had occurred, the Board made no order against Mr. Lawless but ordered Mr. Leclaire to pay $500 to each complainant in compensation for mental anguish and Mr. Montgomery, who held the ultimate responsibility with respect to the discriminatory policy, to compensate each complainant in the amount of $1,000.

REGIONAL ACTIVITIES

1987/88

The Commission's programs are carried out in seven regions which comprise 15 district offices across the province. Statistical tables reflecting complaints received and resolved during the fiscal year may be found in the statistical section of this Report.

Several initiatives were launched or existing programs strengthened to expedite the complaint resolution process during the fiscal year. Chief among them is a more vigorous approach to resolving cases at an early stage of the process through the Priority Case Handling method. This involves an early intervention that provides a remedy for aggrieved individuals and a commitment on the part of the offending party to take proactive steps to eliminate the discriminatory practice.

In addition, more aggressive use is being made of Section 33 of the Code, a provision that was intended to enable an early screening of complaints so as to eliminate non-meritorious complaints before they proceed through all stages of the casework process. Section 33 provides that the Commission may refuse to deal with a complaint if it is not within its jurisdiction; is trivial, frivolous, vexatious or made in bad faith; the facts on which it is based occurred more than six months before it was filed; or there is a procedure under another Act that is more appropriate in the circumstances.

Among the proactive and educational initiatives undertaken by the Conciliation and Compliance Division are the following:

Guidelines for processing complaints alleging discrimination because a woman is, or may become, pregnant, were developed to ensure a fair and consistent application of these provisions of the Code across the province. These guidelines will be distributed to employers, unions, women's groups and other organizations during fiscal year 1988/89.

Consultative and educational sessions were held with landlords, condominium owners, newspaper classified advertising managers and tenants' rights organizations to familiarize them with the recent amendments to the Code prohibiting "adults only" rental and purchasing agreements. A number of Commission-initiated complaints have been filed against landlords and condominium owners who have failed to comply with these provisions. Similar undertakings were made with respect to the amendment prohibiting discrimination in rental accommodation against persons aged 16 and 17 who are not under parental control.

A model policy against sexual harassment was developed by the staff of the Northern Region, as well as a procedure according to which employers can remedy this form of workplace discrimination. This model policy will be finalized and distributed to employers, unions and representative organizations during fiscal year 1988/89.

Also being developed are guidelines for employers and newspapers for writing advertisements for employment, to ensure that they comply with the provisions of Section 22(1) of the Code. This section provides that the right to equal treatment with respect to employment is infringed where an employment advertisement is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Toronto Central Region

This region was created in 1981 when the Commission's caseload had expanded to a point where complaints in the Metropolitan Toronto area could no longer be effectively dealt with by the two existing regions, Toronto East and Toronto West. The boundaries of Toronto Central Region extend from Keele Street on the west to Jarvis Street and Bayview Avenue on the east, and from the downtown core northward to Barrie and Burk's Falls. Located in the region are the head offices of the Government of Ontario and many major Ontario unions and industries, as well as many large hospitals, hotels, businesses and educational institutions.

The number of complaints registered during fiscal year 1987/88 stood at 275. The region experienced an increase in complaints alleging discrimination because of handicap relative to those on other grounds. The 89 complaints based on this ground were followed by those based on race, which totalled 45.

In addition to developing public education initiatives, regional staff have developed and maintained co-operative working relationships with employment and labour organizations, educational institutions and social service agencies in the Toronto area.

A number of significant issues and trends have emerged during the past year. A large proportion of complaints involve major policy matters, and a clear shift is evident from allegations of discrimination against individuals to complaints involving broad social issues. Included among them are bylaws that promote "adult only" housing accommodation, paternity leave and adoption leave policies, health insurance coverage for gay couples, a refusal on the part of a charitable organization to fund charities serving homosexuals, teachers' employee associations that are segregated along gender lines and compulsory retirement at the age of 65.

Toronto East Region

The regional headquarters of the Toronto East Region were moved from downtown Toronto to Scarborough in 1982, thus ensuring that the Commission's services are easily accessible to the community. The increase in complaints and public educational commitments, evident since the region was decentralized, indicates that the new office is meeting the needs of the Scarborough area. As well, in the six-year period since the office opened, the region has witnessed a large increase in complaints from towns and cities beyond the Metropolitan Toronto area.

The region includes Toronto's eastern suburbs and extends northward to Huntsville and Algonquin Park and eastward to Trenton. Much of the region's activity is centred on the Toronto-Scarborough area and in the densely populated lakeshore communities of Ajax, Whitby and Oshawa, where the automotive industry is well represented. The caseload in the Peterborough-Lindsay area has grown steadily over the past several years.

The region accounted for 275 complaints, or 15 per cent of the total complaints received by the Commission during the fiscal year. Of these, 103 related to handicap, 43 to race, 54 to sex and sexual harassment, 27 to age and the remaining 52 were distributed among all the other grounds.

Despite the increase in caseload, the staff have maintained a heavy public education schedule both in Metropolitan Toronto and major centres of the region, such as Oshawa, other towns on Lake Ontario and the Peterborough and Lindsay districts. In

most of these areas, public speaking engagements, seminars and workshops have been conducted in schools, with major manufacturers, employee groups, personnel associations and municipalities. Among the region's educational programs conducted during the fiscal year was a series of seminars for women who wish to return to the workplace, held in co-operation with Canada Manpower. The region also assisted the Peterborough Mayor's Community and Race Relations Committee in producing a manual for conducting workshops in cross-cultural and race relations. A close liaison with all such organizations is maintained and encouraged.

The region has maintained a high profile among its diverse and active communities, which include a large Chinese population in Agincourt and significant East Indian communities in Scarborough and eastern Toronto.

Toronto West Region

The headquarters of this region were also relocated in 1982 to the City of Mississauga. Toronto West includes Peel Region and part of Halton Region, extending to Oakville to the south and west. The regional boundary extends northward to the Nottawasaga Bay area.

The region is heavily oriented to manufacturing and is developing rapidly in both industrial growth and population size. It serves approximately one million residents. Indeed, the Metropolitan Toronto area overall received 838 complaints during the fiscal year, or nearly half of all cases opened throughout Ontario.

Complaints alleging discrimination because of handicap outnumbered cases registered on any other single ground, at 116. Complaints relating to the sex provisions of the Code represented the second highest complaint category, at 66. The number of complaints filed was 288, or 16.5 per cent of total. This represents the highest number of cases filed in any region.

A complaint involving the issue of the employer's duty to make reasonable efforts to accommodate handicapped employees is being heard by a Board of Inquiry. Another major case dealing with the employer's accommodation of an employee's religious obligations is also being litigated.

The region's programs in public education and consultation involved many undertakings with educational institutions, personnel associations, community organizations and senior-level managers and employers. However, the region's major emphasis was placed on reducing a large backlog of complaints, since the volume of complaints in this heavily industrialized area had increased greatly in the past several years.

The settlements of several complaints included an affirmative action component, and two resolutions resulted in the appointment by the respondent companies of an Ombudsman and human rights committee, to deal proactively with discrimination in the workplace.

Eastern Region

The Commission's Eastern Region covers the geographical area east of Trenton, extending northward from Lake Ontario and the St. Lawrence River to the Quebec

border. The region includes the Ottawa Valley from Deep River south to Hawkesbury. Its headquarters are in Ottawa and a district office is located in Kingston.

The region is located in the middle of a bilingual district. As human rights awareness rapidly transcends the confines of urban centres and moves into rural areas, more unilingual Francophones are exercising their rights under the Code.

The Regional Municipality of Ottawa-Carleton constitutes the highest population concentration, with almost half a million residents. Its labour force distribution is somewhat reflected in the types of complaints that are filed under the Code. As Canada's capital, Ottawa features a large, diversified group of professionals, working in governmental and non-governmental organizations, the diplomatic corps and institutions of higher learning. The region includes many service industries such as consulting, high-tech and tourism. Kingston and the St. Lawrence Seaway Valley are more industrialized, with a number of medium-sized factories and small businesses.

The volume of complaints has been on a consistent rise since the region was established in 1978. In the past four years alone, the total caseload has increased by 122 per cent.

Two hundred and one complaints or 11 per cent of the Commission's total, were received in this region during fiscal year 1987/88.

Complaints filed on the grounds of handicap and sex constituted the two largest categories during the fiscal year, followed by complaints of sexual harassment. These grounds accounted for 78 and 30 complaints received in the region respectively.

A settlement was reached in a case that had been referred to a Board of Inquiry, involving a Seventh Day Adventist who was dismissed for refusing to report to his job as a salesclerk on Saturdays, which is his sabbath. Negotiations prior to the hearing resulted in reinstatement of the complainant to a full-time position with Saturdays off, restoration of full seniority and benefits, and compensation in the amount of $25,000.

Among the region's public educational activities during the fiscal year was a jointly sponsored commemoration of Human Rights Day on December 10, with the Canadian Human Rights Commission and la Commission des droits de la personne du Québec. This co-operative project was first initiated in 1986, and it is expected that the three commissions will co-ordinate additional projects and forums based on their mutual interests.

Northern Region

This region, headquartered in Sudbury, has four district offices in Kenora, Thunder Bay, Sault Ste. Marie and Timmins.

The Northern Region constitutes 85 per cent of the province's geographical area and 10 per cent of its population. For this reason, the regional staff, as well as Commissioners, have continued to expand the Commission's outreach program to those communities that do not have immediate access to the services provided by the region's five offices. As well, toll-free telephone numbers are available to all residents of northern Ontario.

The number of complaints filed in the region stood at 205, or 11 per cent of the total. Handicap was the most prevalent ground, at 78 complaints.

The geographic boundaries for the Northern Region stretch from Mattawa in the east to the Manitoba border in the west, and from Parry Sound in the south to the shores of Hudson's Bay in the north. Of the 800,000 residents who live in the region, approximately 80,000 — or ten per cent — are Native Indians. Eighty per cent of complaints alleging discrimination on the grounds of race and colour are filed by Native persons. In addition, 30 per cent of residents are Francophones. As well as providing services in both French and English, the region has capability in Ojibway and Mohawk.

The Northern Region is best characterized as having resource-based industries with very little manufacturing or secondary industry to support the primary industries. Thus, any sudden shift in demand can destroy whole industries and force many people to look for new jobs. An example is the problems faced by the people of Elliot Lake when American demand for uranium dried up in the early 1960's and its revival as a community in the mid 1970's when the demand increased.

In addition to the region's outreach program, the staff also delivers a comprehensive consultative and educational service. The Human Rights Officer in Timmins developed and conducted a program in inter-cultural relations to members of the Timmins Police Force during the fiscal year. Staff also participated in a community, ethnic and race relations conference sponsored by the Race Relations Directorate in northwestern Ontario.

The Regional Manager participated in a province-wide teleconference on the Rights of the Disabled, which was sponsored by the Resource, Educational and Advocacy Centre for the Handicapped.

Southwestern Region

The Southwestern Region comprises a number of primarily industrial or commercial urban centres serving a nearby agricultural heartland. Also located in the region are eight Native reserves. The economy is therefore varied, ranging from the Big Three automobile manufacturers in Windsor; to large-scale commercial and institutional sectors, supplemented by automobile parts manufacturing, in London and Kitchener; to agriculture.

The Commission's programs are delivered through district offices located in Windsor, London and Kitchener, with London as the regional headquarters. The region includes Simcoe and Brantford, extends eastward to Guelph and continues up Number 6 Highway to Owen Sound and the Bruce Pensinsula.

The larger communities are slowly accommodating their changing population mosaic as more racial minorities arrive and enter the work force. At the same time, women are assuming non-traditional roles in greater numbers, seeking work outside the home and in job categories previously closed to them.

Two hundred and thirty-one complaints were filed in the region during 1987/88, or 13 per cent of the total. Handicap and sex cases were predominant, at 92 and 38 respectively.

Among the region's public educational activities during the fiscal year was its participation in an employment equity conference in London, sponsored by the Race Relations Directorate. Approximately 100 human resources personnel received hands-on training in providing remedies for systemic discrimination. The regional Manager was a member of the executive planning committee for the conference and chaired the session on data collection.

Hamilton-Niagara Region

The Hamilton-Niagara Region was established in 1984 because the human rights issues in the Southwest had increased to the point where they could no longer be adequately addressed within the former regional boundaries.

Regional headquarters are located in Hamilton and there is a district office in St. Catharines. The region covers the Golden Horseshoe and Greater Hamilton areas including Burlington, Simcoe and Port Dover. The region includes a large industrialized base and a rich agricultural economy. The total number of complaints received during the fiscal year was 287, or 16.5 per cent of all cases throughout the province.

During the fiscal year, the region saw an increase in complaints citing the ground of handicap, which rose from 39 in the previous year to 150 in 1987/88.

The regional staff have conducted a number of seminars and other educational projects on equal opportunity in employment, with senior managers, personnel associations and industrial relations officers.

Several major employment equity initiatives have been built into case settlements: a large manufacturer and a transit authority agreed to establish numerical targets for the employment of women, and a school board and regional municipality are being assisted in the development of an affirmative action plan for women and members of racial minorities.

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TABLE 1 - Complaints Received by Region of Registration and Ground

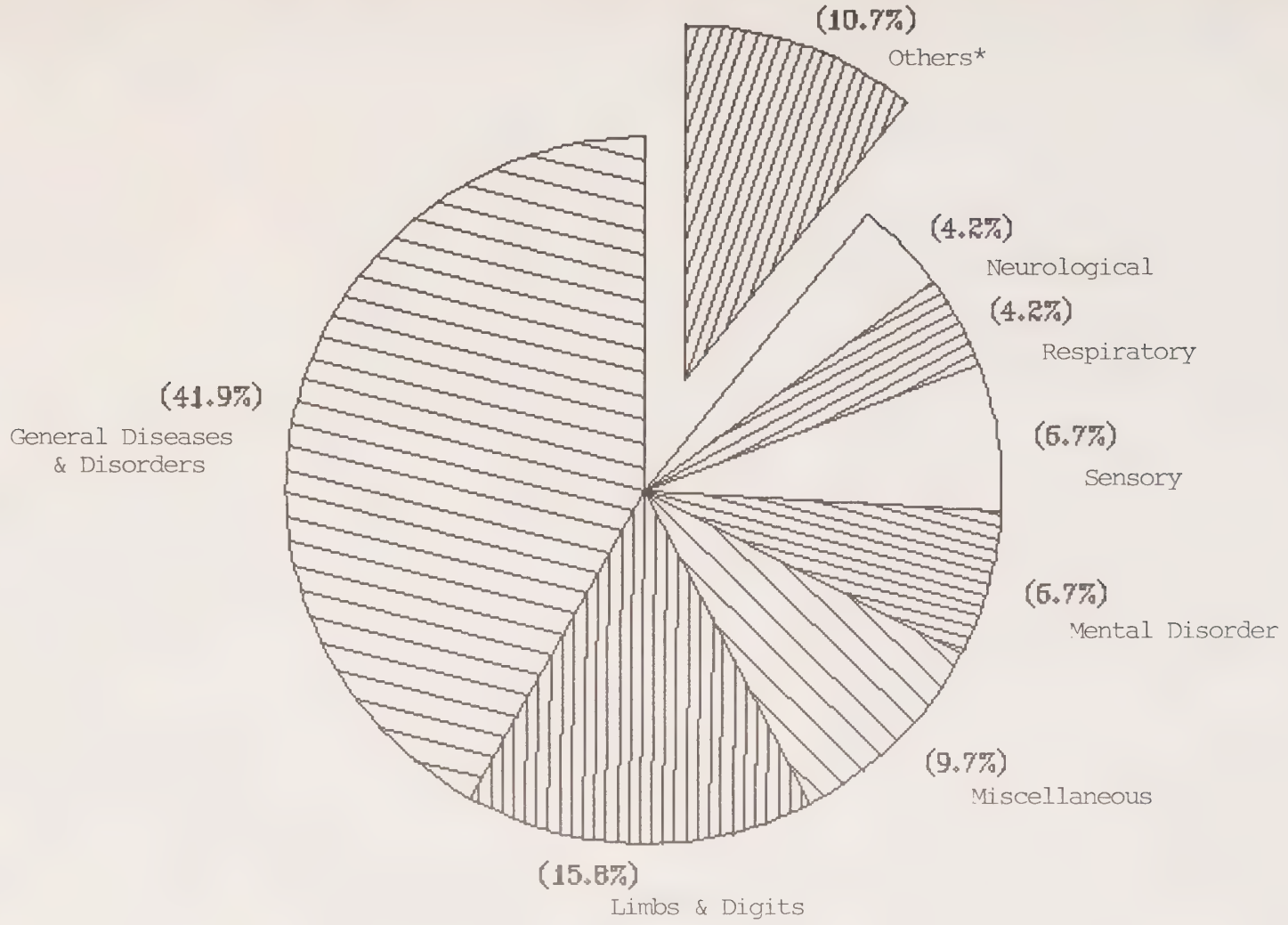
Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	No Grounds	**Total**	Region % of Total
Eastern	14	8	5	30	18	4	15	11	11	78	6	0	1	0	0	**201**	11%
Hamilton/Niagara	21	3	-	33	20	3	15	13	21	150	6	0	2	0	0	**287**	16%
Northern	24	10	3	32	14	3	12	12	11	78	4	0	0	0	2	**205**	11%
Southwestern	18	9	2	38	25	1	24	6	12	92	2	1	1	0	0	**231**	13%
U.F.H.	0	0	0	0	0	0	0	0	0	24	0	0	0	0	0	**24**	1%
Toronto Central	45	15	11	32	22	6	27	8	12	89	4	0	3	0	1	**275**	15%
Toronto East	43	7	3	36	18	3	27	10	23	103	1	0	1	0	0	**275**	15%
Toronto West	59	7	2	37	29	0	15	5	10	116	3	0	5	0	0	**288**	16%
Total (%)	224 13%	59 3%	26 1%	238 14%	146 8%	20 1%	135 8%	65 4%	100 6%	730 41%	26 1%	1 -	13 1%	0 -	3 -	**1786** 100%	100%

TABLE 2 - Complaints Received by Ground and Provision, 1987/88

Code Provisions: (Ground:)	Race/Colour	Ethnic Origin	Creed	Sex & Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	**Total**	Provision % of Total
Services	37	9	6	15	-	10	8	10	4	66	1	-	-	1	**167**	9
Accommodation	21	3	-	14	2	-	15	16	72	5	22	-	-	-	**170**	10
Contracts	3	1	-	-	-	-	1	3	-	1	-	-	-	-	**9**	1
Employment	158	44	20	206	144	9	111	36	24	654	3	1	-	2	**1412**	79
Vocational Associations	5	2	-	3	-	1	-	-	-	4	-	-	-	-	**15**	1
Reprisal	-	-	-	-	-	-	-	-	-	-	-	-	13	-	**13**	1
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**0**	-
Total	**224**	**59**	**26**	**238**	**146**	**20**	**135**	**65**	**100**	**730**	**26**	**1**	**13**	**3**	**1786**	100
Ground % of Total	13	3	1	14	8	1	8	4	6	41	1	-	1	-	100	
Extension of Code Provisions Also Cited in Complaints:																
Constructive Discrimination	6	1	-	5	-	-	-	2	2	2	-	-	-	-	**18**	23
Association Discrimination	6	-	-	3	1	-	-	2	1	-	-	1	-	-	**14**	20
Announced Discrimination	-	-	-	2	-	-	1	-	-	-	-	-	-	-	**3**	2
Advertising	1	-	2	-	-	-	1	2	-	-	-	-	-	-	**6**	6
Application Forms	-	1	2	1	-	-	15	3	1	4	-	-	-	-	**27**	49
Total	13	2	4	11	1	-	17	9	4	6	-	1	-	-	**68**	100

HANDICAP CASES RECEIVED, 1987/88

Total: 730



* Cardiovascular, Neuromuscular, Learning Disability, Mental Retardation, Workers' Compensation Act.

TABLE 4

DISPOSITION BY GROUNDS

Cases Closed, 1987/88

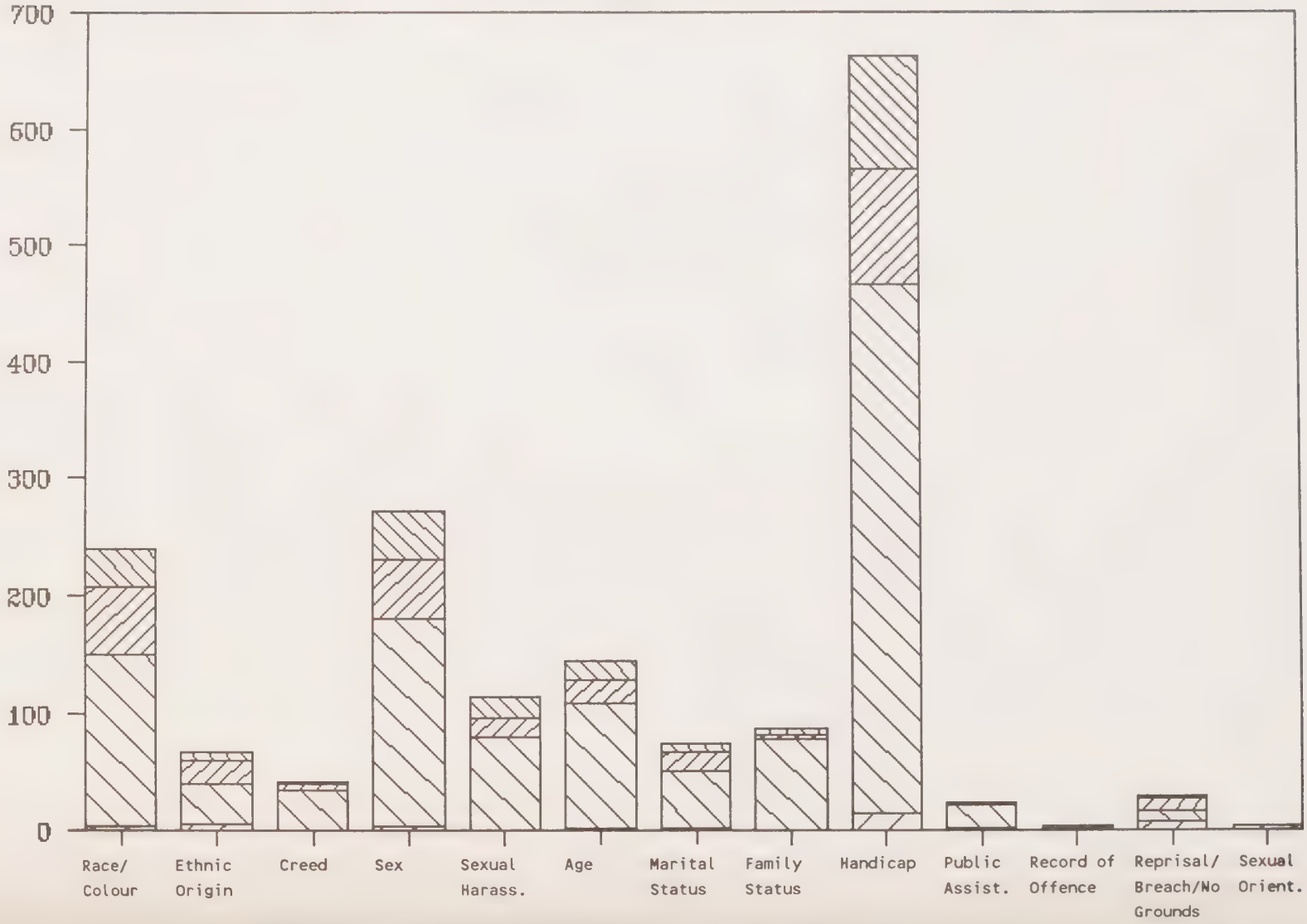


TABLE 5 – Settlements Effected by Ground

Ground: / Settlement:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$246,988	43	28	3	3	9	30	17	24	55
Ethnic Origin	33,583	3	4	3	-	1	5	1	3	4
Creed	108,850	8	11	-	-	2	15	4	2	4
Sex & Pregnancy	95,336	51	32	6	5	2	30	20	12	51
Sexual Harassment	110,883	44	4	1	-	7	24	9	17	47
Sexual Orientation	200	1	-	-	-	-	2	-	-	2
Age	47,257	21	19	-	2	2	34	4	8	31
Marital Status	105,443	9	15	1	-	-	11	4	4	8
Family Status	9,500	9	26	11	-	1	22	1	7	18
Handicap	543,965	166	118	21	2	10	51	42	30	133
Receipt of Public Assistance	1,455	2	5	2	-	1	4	-	1	4
Record of Offences	-	-	2	-	-	-	1	-	-	-
Reprisal/Breach/No Grounds	40,312	8	4	-	-	1	1	2	4	5
Total	**$1,363,772**	**365**	**268**	**48**	**12**	**36**	**230**	**104**	**112**	**362**

TABLE 6 - Complaints Closed by Disposition, Ground and Provision

Type of Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
EMPLOYMENT															
Settled	101	24	29	150	81	3	84	20	10	404	-	2	-	908	66
Dismissed/Not Pursued	45	17	3	45	18	-	22	13	2	101	2	3	2	273	20
Withdrawn	20	4	2	39	18	-	13	3	2	93	-	-	-	194	14
Sub-Total	166	45	34	234	117	3	119	36	14	598	2	5	2	1375	100
ACCOMMODATION															
Settled	15	4	1	7	-	-	13	15	59	5	20	-	-	139	87
Dismissed/Not Pursued	3	1	-	1	-	-	1	4	1	1	1	-	-	13	8
Withdrawn	4	-	-	-	-	-	-	1	2	-	-	-	-	7	4
Sub-Total	22	5	1	8	-	-	14	20	62	6	21	-	-	159	100
SERVICES															
Settled	23	6	4	12	-	2	6	12	8	43	-	-	-	116	67
Dismissed/Not Pursued	11	6	2	7	-	-	1	2	2	9	1	-	2	43	25
Withdrawn	4	1	-	2	-	-	2	1	-	5	-	-	-	15	9
Sub-Total	38	13	6	21	-	2	9	15	10	57	1	-	2	174	100
CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT															
Settled	5	-	-	5	-	-	1	1	-	2	-	-	10	24	43
Dismissed/Not Pursued	5	3	1	1	-	-	-	1	-	2	-	-	13	26	46
Withdrawn	2	1	-	-	-	-	-	1	-	-	-	-	2	6	11
Sub-Total	12	4	1	6	-	-	1	3	-	4	-	-	25	56	100

TABLE 7 - Complaints Closed by Disposition, Sex of Complainant and Ground

Males							Females				
Settled Nos.	%	Dismissed Nos.	%	Withdrawn Nos.	%	Total Nos.		Total Nos.	Settled Nos.	%	Dismissed Nos.	%	Withdrawn Nos.	%
83	(55)	50	(33)	19	(31)	152	Race	95	63	(66)	20	(21)	12	(13)
17	(40)	20	(48)	5	(12)	42	Ethnic Origin	24	16	(67)	7	(29)	1	(4)
21	(88)	2	(8)	1	(4)	24	Creed	17	13	(76)	4	(24)	-	(0)
29	(56)	17	(33)	6	(12)	52	Sex & Pregnancy	211	138	(65)	38	(18)	35	(17)
1	(17)	3	(50)	2	(33)	6	Sexual Harassment	108	78	(72)	14	(13)	16	(15)
49	(60)	18	(22)	14	(17)	81	Age	53	47	(89)	5	(9)	2	(2)
16	(67)	7	(29)	1	(4)	24	Marital Status	50	32	(64)	13	(26)	5	(10)
21	(84)	3	(12)	1	(4)	25	Family Status	59	54	(92)	2	(3)	3	(5)
228	(62)	84	(23)	54	(15)	366	Handicap	289	216	(75)	29	(10)	44	(15)
6	(67)	3	(33)	-	(0)	9	Public Assistance	15	14	(93)	1	(7)	-	(0)
-	-	3	(100)	-	(0)	3	Record of Offences	2	2	(100)	-	(0)	-	(0)
5	(31)	9	(56)	2	(13)	16	Other*	5	3	(60)	2	(40)	-	(0)
476	-	**219**	-	**105**	-	**800**	**Total**	**928**	**676**	-	**135**	-	**117**	-
60%	-	27%	-	13%	-	100%	Percentage	100%	73%	-	15%	-	13%	-

* Sexual Orientation, Reprisal, Breach of Settlement and No Ground (Section 33).

TABLE 8 - Employment Complaints Closed by Disposition, Stage of Employment and Ground

Type of Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Breach/No Grounds	**TOTAL**	% of Total
RECRUITMENT AND HIRING														
Settled	13	7	8	46	-	46	10	3	56	-	-	-	189	69
Dismissed/Not Pursued	9	7	1	6	-	3	2	-	24	-	1	1	54	20
Withdrawn	4	1	1	6	-	6	1	2	8	-	1	1	29	11
Sub-Total	**26**	**15**	**10**	**58**	**-**	**55**	**13**	**5**	**88**	**-**	**1**	**1**	**272**	100
% of Total	16	33	29	25	-	46	36	36	15	-	20	50	22	
TERMINATION														
Settled	50	10	8	79	2	22	7	6	301	-	1	-	486	66
Dismissed/Not Pursued	23	5	2	16	-	11	11	1	65	1	1	1	137	19
Withdrawn	12	3	-	20	-	4	-	-	71	-	-	-	110	15
Sub-Total	**85**	**18**	**10**	**115**	**2**	**37**	**18**	**7**	**437**	**1**	**2**	**1**	**733**	100
% of Total	51	40	29	49	67	31	50	50	73	50	40	50	58	
DURING EMPLOYMENT														
Settled	38	7	13	25	1	16	3	1	47	-	1	-	157	60
Dismissed/Not Pursued	13	5	-	23	-	8	-	1	12	1	1	-	64	25
Withdrawn	4	-	1	13	-	3	2	-	14	-	-	-	37	15
Sub-Total	**55**	**12**	**14**	**61**	**1**	**27**	**5**	**2**	**73**	**1**	**2**	**-**	**253**	100
% of Total	33	27	41	26	33	23	14	14	12	50	40	-	20	
Total	**166**	**45**	**34**	**234**	**3**	**119**	**36**	**14**	**598**	**2**	**5**	**2**	**1258**	100
Percentage	100	100	100	100	100	100	100	100	100	100	100	100		

TABLE 9 - Employment Complaints Closed by Type of Work and Ground

Type of Work: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal, etc.	**TOTAL**	% of Total
Professional/ Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	30	14	5	42	16	-	20	6	1	66	-	1	2	**203**	15
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	9	2	4	40	18	-	19	2	1	55	-	1	-	**151**	11
Clerical Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	24	5	5	53	31	-	18	7	2	65	1	-	-	**211**	15
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	18	7	2	14	5	-	9	1	-	51	-	-	-	**107**	8
Operatives Punch Press/Lathe/Machine/Crane Operator, Welder, etc.)	12	3	2	4	1	-	7	-	4	78	-	-	-	**111**	8
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	25	8	9	40	28	2	14	4	1	88	-	1	-	**220**	16
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	48	6	7	41	18	1	32	16	5	195	1	2	-	**372**	27
Total	**166**	**45**	**34**	**234**	**117**	**3**	**119**	**36**	**14**	**598**	**2**	**5**	**2**	1375	**100**

TABLE 10 - Cases Closed by Respondents' Type of Industry and Grounds

Type of Industry: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Records of Offence	No grounds etc.	TOTAL	% of Total
Natural Resources	**1**	-	-	**2**	-	-	**3**	**2**	-	**30**	-	-	-	**38**	**2**
Manufacturing															
Metals/Parts/Machinery	14	2	-	6	-	-	12	-	1	64	-	-	2	101	
Food/Tobacco	7	-	-	7	2	-	8	8	2	23	2	1	1	61	
Wood/Furniture/Paper	4	1	-	2	1	-	-	1	2	16	-	-	1	28	
Automotive/Aircraft	6	1	1	7	2	-	2	1	-	28	-	-	1	49	
Electrical	3	1	2	9	4	-	6	-	1	20	-	-	2	48	
Other	22	5	1	33	10	-	11	4	1	81	-	-	5	173	
Sub-total	**56**	**10**	**4**	**64**	**19**	-	**39**	**14**	**7**	**232**	**2**	**1**	**12**	**460**	26
Construction	**2**	**1**	-	**4**	**3**	-	-	**1**	**1**	**12**	-	-	-	**24**	1
Transportation/Communications/Utilities	**8**	**3**	**6**	**9**	**1**	-	**7**	**2**	-	**21**	-	**1**	-	**58**	3
Trade and Retail	**27**	**3**	**6**	**39**	**21**	**2**	**27**	**8**	**4**	**95**	-	**2**	**1**	**235**	13
Finance, Insurance, Real Estate	**23**	**6**	**1**	**21**	**12**	-	**19**	**27**	**59**	**34**	**21**	-	**1**	**224**	13
Community/Business/Personal Services															
Schools/Colleges/Universities	8	6	4	9	1	-	7	1	2	13	-	-	3	54	
Hospitals/Physicians	25	7	4	14	6	-	5	3	1	33	-	-	3	101	
Employment Agencies	-	-	1	6	-	-	1	-	-	4	-	-	-	12	
Hotels/Restaurants	28	4	5	37	23	2	9	1	4	55	-	-	2	170	
Building Services	10	2	3	9	7	-	4	1	-	33	-	-	1	70	
Other	28	18	5	45	15	1	8	6	4	48	1	-	3	182	
Sub-total	**99**	**37**	**22**	**120**	**52**	**3**	**34**	**12**	**11**	**186**	**1**	-	**12**	**589**	33
Public Administration	**23**	**6**	**4**	**10**	**6**	-	**14**	**8**	**4**	**50**	-	**1**	**3**	**129**	7
Unspecified & Inapplicable	-	1	-	3	-	-	1	-	-	2	-	-	-	7	
Total	**239**	**67**	**43**	**272**	**114**	**5**	**144**	**74**	**86**	**662**	**24**	**5**	**29**	**1764**	100

TABLE 11 - Boards of Inquiry Appointed and Completed, 1987/88 (1986/87)

	1987/88	1986/87
Boards Appointed	26	70
Boards Completed:	46	35
Pre-hearing Settlements	23	6
Decisions for Complainant	18	24
Decisions for Respondent	5	5
Board Decisions Under Appeal	5	16

TABLE 12 - Inquiries, Voluntary Compliance And Public Education, 1987/88 (1986/87)

Compliance Division	1987/88	1986/87
Inquiries	56,791	50,579
Referrals	16,812	16,427
Informal Resolutions	74	68
Application Form Reviews	798	562
Advertising Reviews	254	167
Exemptions	128	84
Public Education Activities	420	499
Publications Distributed	230,892	255,115

ONTARIO HUMAN RIGHTS COMMISSION

at March 31, 1988

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Douglas, Reata
Justason, Barbara
Silberman, Toni
Wacyk, Tanja

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Falkner, Judith
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Lazor, Yan
Wilson, Chris
* Winter, John

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Choudhury, Nisha
Jim, Serena
McKee, Anne
* Reynolds, Jessica
Yatco, Jose

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Nakamura, Mark
Sequeira, Vera
Stratton, Jim
Svegzda, Laima

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* Gulamhussein, Zarina
Mahoney, Owen
Morris, Greg
Ramanujam, Sita
Ruiter, Fred
Singh, Vidya
* Yale, Michael

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* Chan, Lucienne
Cotton, W. Murray
* Delph, Esther
* Hershorn, Barbara
Kalimootoo, Roxanne
Legault, Therese
Maillet, René
Polley, Joe
Richard, Maurice

Hamilton-Niagara Region

Cargill-Sim, Fiona
* Ferrer, Tony
Firth, Dana
Jostman, Susan
McSween, Selwyn
* Parr, Steve
Strojin, Anny
Witter, Merv

Toronto East Region

Caffrey, Colm
Della Vella, Rick
Edwards, Neil
Fiddes, Judy
* Hasan, Zahra
Horsford, Jocelyn
Ioi, Rod
Kerna, Gloria
Masellis, Vicki
Morrison, Glen
Palacio, Roger
Phillips, Lolita
Seales, Robert

Northern Ontario Region

Buffington, Margaret
* Daybutch, Gloria
Fratesi, Debra
Lapalme, Gilles
Mitchell, Irene
Ryan, Lori
St. Onge, Jo-Anne
* Serpell, Frances
Welch, Dan

Southwestern Ontario Region

Barnes, Dorothy
Blackwood, Calvin
Burns, Walter
Carrick, Anne
Dahlin, Anita
Harrington, Rick
Koushik, Aruna
Schiller, David

Toronto Central Region

Ackroyd, Lynda
Balter, Israel
Davidson, Marcia
Della-Nebbia, Nancy
Felix, Victoria
* Gaspar, Fern
* Holt, Silvilyn
Johnson, Beverley
Lawrence, Greg
Mullings, Paulette
Nebout, Maggie
Obermuller, Dianne
Speranzini, Gary
Stern, Doris
Williams, Ashworth

Toronto West Region

Benaglia, Maggie
Buchok, Paula
Chapman, Shirley
Cooper, Connie
Fox, Anita
Frank, Diane
Hajsaniuk, Drew
Kaczmarski, Joan
MacKenzie, Wes
Marcuz, Vic
* Samuels, Mary
Sibblies, Geanine
Soondarsingh, Vijay
* Whiteside, Anne

* These staff members are on contract or secondment.

COMMISSION OFFICES

Head Office

400 University Avenue
Toronto, Ontario
M7A 1T7
(416) 965-6841

Branch Offices

Hamilton

119 King Street West
L8N 3Z9
(416) 521-7736

Kenora

808 Robertson Street
P9N 1X9
(807) 468-3128

Kingston

1055 Princess Street
K7L 1H3
(613) 545-4340

Kitchener

824 King Street West
N2G 1G1
(519) 744-8101

London

205 Oxford Street East
N6A 5G6
(519) 439-3231

Ottawa

2197 Riverside Drive
K1H 7X3
(613) 523-7530

Sault Ste. Marie

390 Bay Street
P6A 1X2
(705) 949-3331

St. Catharines

205 King Street
L2R 3J5
(416) 682-7261

Sudbury

199 Larch Street
P3E 5P9
(705) 675-4455

Thunder Bay

435 James Street South
P7E 6E3
(807) 475-1691

Timmins

273 Third Avenue
P4N 1E2
(705) 267-6231

Toronto Central

400 University Avenue
Toronto M7A 1T7
(416) 965-6841

Toronto East

2500 Lawrence Avenue East
Scarborough M1P 2R7
(416) 750-3575

Toronto West

2 Robert Speck Parkway
Mississauga L4Z 1H8
(416) 273-7811

Windsor

500 Ouellette Avenue
N9A 1B3
(519) 256-8278

BUREAUX DE LA COMMISSION

Bureau principal

400, avenue University
Toronto (Ontario)
M7A 1T7
(416) 965-6841

Bureaux auxiliaires

Hamilton
119, rue King ouest
L8N 3Z9
(416) 521-7738

Kenora
808, rue Robertson
P9N 1X9
(807) 468-3128

Kingston
1055, rue Princess
K7L 1H3
(613) 547-3414

Kitchener
824, rue King ouest
N2G 1G1
(519) 744-8101

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205, rue Oxford est
N6A 5G6
(519) 439-3231

Ottawa
2197, promenade Riverside
K1H 7X3
(613) 523-7530

Sault Ste. Marie
390, rue Bay
P6A 1X2
(705) 949-3331

St. Catharines
205, rue King
L2R 3J5
(416) 682-7261

Sudbury
199, rue Larch
P3E 5P9
(705) 675-4455

Thunder Bay
435, rue James sud
P7E 6E3
(807) 475-1693

Timmins
273, 3e avenue
P4N 1E2
(705) 267-6231

Toronto-Centre
400, avenue University
Toronto, M7A 1T7
(416) 965-6841

Toronto-Est
2500, avenue Lawrence est
Scarborough M1P 2R7
(416) 750-3575

Toronto-Ouest
2, Robert Speck Parkway
Mississauga L4Z 1H8
(416) 273-7811

Windsor
500, avenue Ouellette
N9A 1B3
(519) 256-8278

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* Whiteside, Anne

* Personnel contractuel ou en détachement

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au 31 mars 1988

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* Gulamhussein, Zarina
Mahoney, Owen
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* Yale, Michael

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Cotton, W. Murray
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* Hershorn, Barbara
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Legault, Thérèse
Maillet, René
Polley, Joe
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Jostman, Susan
McSween, Selwyn
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Witter, Merv

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Della Vella, Rick
Edwards, Neil
Fiddes, Judy
* Hasan, Zahra
Horsford, Jocelyn
Ioi, Rod
Kerna, Gloria
Lloyd, Eva
Masellis, Vicki
Morrison, Glen
Palacio, Roger
Phillips, Lolita
Seales, Robert

TABLEAU 11 - **Commissions d'enquête, 1987/88 (1986/87)**

	1987/88	1986/87
Commissions nommées	26	70
Audiences tenues:	46	35
Règlements intervenus avant l'audience	23	6
Décisions favorables au plaignant	18	24
Décisions favorables a l'intimé	5	5
Décisions en appel	5	16

TABLEAU 12 - **Demandes de renseignements, observance spontanée de la loi et éducation du public, 1987/88 (1986/87)**

Section du respect de la loi	1987/88	1986/87
Demandes de renseignements	56,791	50,579
Recommandations	16,812	16,427
Règlements officieux	74	68
Révision de formules de demande d'emploi	798	562
Révision d'annonces	254	167
Exemptions	128	84
Activités d'éducation du public	420	499
Publications distribuées	230,892	255,115

TABLEAU 10 – Répartition des plaintes classées, par secteur industriel et motif de discrimination

Secteur industriel : / Motif :	Race ou couleur	Origine ethnique	Croyance	Sexe	Harcèlement sexuel	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social	Existence d'un casier judiciaire	Aucun motif (art. 33)	**Total**	Pourcentage du total
Richesses naturelles	**1**	–	–	**2**	–	–	**3**	**2**	–	**30**	–	–	–	**38**	**2**
Secteur manufacturier															
Métaux, pièces, machines	14	2	–	6	–	–	12	–	1	64	–	–	2	101	
Aliments, tabac	7	–	–	7	2	–	8	8	2	23	2	1	1	61	
Bois, ameublement, papier	4	1	–	2	1	–	–	1	2	16	–	–	1	28	
Automobile, aéronautique	6	1	1	7	2	–	2	1	–	28	–	–	1	49	
Appareils électriques	3	1	2	9	4	–	6	–	1	20	–	–	2	48	
Autres	22	5	1	33	10	–	11	4	1	81	–	–	5	173	
Total partiel	**56**	**10**	**4**	**64**	**19**	–	**39**	**14**	**7**	**232**	**2**	**1**	**12**	**460**	26
Construction	**2**	**1**	–	**4**	**3**	–	–	**1**	**1**	**12**	–	–	–	**24**	1
Transport, communications, services publics	**8**	**3**	**6**	**9**	**1**	–	**7**	**2**	–	**21**	–	**1**	–	**58**	3
Vente au détail	**27**	**3**	**6**	**39**	**21**	**2**	**27**	**8**	**4**	**95**	–	**2**	**1**	**235**	13
Finance, assurance, immobilier	**23**	**6**	**1**	**21**	**12**	–	**19**	**27**	**59**	**34**	**21**	–	**1**	**224**	13
Services communautaires, d'affaires et personnels															
Écoles, collèges et universités	8	6	4	9	1	–	7	1	2	13	–	–	3	54	
Hôpitaux et médecins	25	7	4	14	6	–	5	3	1	33	–	–	3	101	
Agences de placement	–	–	1	6	–	–	1	–	–	4	–	–	–	12	
Hôtels et restaurants	28	4	5	37	23	2	9	1	4	55	–	–	2	170	
Services du bâtiment	10	2	3	9	7	–	4	1	–	33	–	–	1	70	
Autres	28	18	5	45	15	1	8	6	4	48	1	–	3	182	
Total partiel	**99**	**37**	**22**	**120**	**52**	**3**	**34**	**12**	**11**	**186**	**1**	–	**12**	**589**	33
Administration publique	**23**	**6**	**4**	**10**	**6**	–	**14**	**8**	**4**	**50**	–	**1**	**3**	**129**	7
Non précisé et sans objet	–	1	–	3	–	–	1	–	–	2	–	–	–	7	
Total	**239**	**67**	**43**	**272**	**114**	**5**	**144**	**74**	**86**	**662**	**24**	**5**	**29**	**1764**	100

TABLEAU 9 - Répartition des plaintes classées, par type d'emploi et motif de discrimination

Type d'emploi : / Motif :	Race ou couleur	Origine ethnique	Croyance	Sexe	Harcèlement sexuel	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social	Existence d'un casier judiciaire	Représailles ou violation du règlement intervenu ou aucun motif	**Total**	Pourcentage du total
Professions libérales, gestion, technique (avocats, techniciens, cadres, enseignants, inspecteurs, infirmiers, etc.)	30	14	5	42	16	-	20	6	1	66	-	1	2	**203**	15
Ventes (représentants commerciaux, responsables des achats, commis, etc.)	9	2	4	40	18	-	19	2	1	55	-	1	-	**151**	11
Travail de bureau (dactylos, commis au classement ou aux écritures, réceptionnistes, perforateurs, etc.)	24	5	5	53	31	-	18	7	2	65	1	-	-	**211**	15
Artisans et contremaîtres (plombiers, boulangers, coiffeurs, chefs d'équipe, mécaniciens, etc.)	18	7	2	14	5	-	9	1	-	51	-	-	-	**107**	8
Opérateurs (opérateurs de presse à découper, de tour, de machines, conducteurs de grue, soudeurs, etc.)	12	3	2	4	1	-	7	-	4	78	-	-	-	**111**	8
Services (serveurs et serveuses, aides ménagères, gardiens de sécurité, surintendants d'immeubles, etc.)	25	8	9	40	28	2	14	4	1	88	-	1	-	**220**	16
Travail général (conducteurs, expéditionnaires, nettoyeurs, ouvriers de chaînes de montage, manoeuvres, etc.)	48	6	7	41	18	1	32	16	5	195	1	2	-	**372**	27
Total	**166**	**45**	**34**	**234**	**117**	**3**	**119**	**36**	**14**	**598**	**2**	**5**	**2**	**1375**	**100**

TABLEAU 8 – Répartition des plaintes par type de règlement et motif de discrimination en matière d'emploi

Type de règlement : / Motif :	Race ou couleur	Origine ethnique	Croyance	Sexe	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social	Existence d'un casier judiciaire	Violation du règlement intervenu ou aucun motif	**Total**	Pourcentage du total partiel
RECRUTEMENT ET EMBAUCHAGE														
Plaintes réglées	13	7	8	46	–	46	10	3	56	–	–	–	189	69
Plaintes rejetées/classées	9	7	1	6	–	3	2	–	24	–	1	1	54	20
Plaintes retirées	4	1	1	6	–	6	1	2	8	–	1	1	29	11
Total partiel	**26**	**15**	**10**	**58**	**–**	**55**	**13**	**5**	**88**	**–**	**1**	**1**	**272**	100
Pourcentage	16	33	29	25	–	46	36	36	15	–	20	50	22	
CESSATION D'EMPLOI														
Plaintes réglées	50	10	8	79	2	22	7	6	301	–	1	–	486	66
Plaintes rejetées/classées	23	5	2	16	–	11	11	1	65	1	1	1	137	19
Plaintes retirées	12	3	–	20	–	4	–	–	71	–	–	–	110	15
Total partiel	**85**	**18**	**10**	**115**	**2**	**37**	**18**	**7**	**437**	**1**	**2**	**1**	**733**	100
Pourcentage	51	40	29	49	67	31	50	50	73	50	40	50	58	
EN COURS D'EMPLOI														
Plaintes réglées	38	7	13	25	1	16	3	1	47	–	1	–	157	60
Plaintes rejetées/classées	13	5	–	23	–	8	–	1	12	1	1	–	64	25
Plaintes retirées	4	–	1	13	–	3	2	–	14	–	–	–	37	15
Total partiel	**55**	**12**	**14**	**61**	**1**	**27**	**5**	**2**	**73**	**1**	**2**	**–**	**253**	100
Pourcentage	33	27	41	26	33	23	14	14	12	50	40	–	20	
Total	**166**	**45**	**34**	**234**	**3**	**119**	**36**	**14**	**598**	**2**	**5**	**2**	**1258**	100
Pourcentage	100	100	100	100	100	100	100	100	100	100	100	100		

TABLEAU 7 - Répartition des plaintes selon le type de règlement, le sexe du plaignant et le motif de discrimination

Hommes					Femmes			
Plaintes retirées Nombre %	Plaintes rejetées Nombre %	Plaintes réglées Nombre %	Total		Total	Plaintes réglées Nombre %	Plaintes rejetées Nombre %	Plaintes retirées Nombre %
83 (55)	50 (33)	19 (31)	152	Race	95	63 (66)	20 (21)	12 (13)
17 (40)	20 (48)	5 (12)	42	Origine ethnique	24	16 (67)	7 (29)	1 (4)
21 (88)	2 (8)	1 (4)	24	Croyance	17	13 (76)	4 (24)	- (0)
29 (56)	17 (33)	6 (12)	52	Sexe et grossesse	211	138 (65)	38 (18)	35 (17)
1 (17)	3 (50)	2 (33)	6	Harcèlement sexuel	108	78 (72)	14 (13)	16 (15)
49 (60)	18 (22)	14 (17)	81	Age	53	47 (89)	5 (9)	2 (2)
16 (67)	7 (29)	1 (4)	24	Etat matrimonial	50	32 (64)	13 (26)	5 (10)
21 (84)	3 (12)	1 (4)	25	Etat familial	59	54 (92)	2 (3)	3 (5)
228 (62)	84 (23)	54 (15)	366	Infirmité	289	216 (75)	29 (10)	44 (15)
6 (67)	3 (33)	- (0)	9	Etat d'assisté social	15	14 (93)	1 (7)	- (0)
- -	3(100)	- (0)	3	Existence d'un casier judiciaire	2	2(100)	- (0)	- (0)
5 (31)	9 (56)	2 (13)	16	Divers*	5	3 (60)	2 (40)	- (0)
476 -	**219 -**	**105 -**	**800**	**Total**	**928**	**676 -**	**135 -**	**117 -**
60% -	27% -	13% -	100%	Pourcentage	100%	73% -	15% -	13% -

* Orientation sexuelle, représailles, violation du règlement intervenu, aucun motif (article 33).

TABLEAU 6 – Répartition des plaintes par type de règlement, motif de discrimination et domaine

Type de règlement : / Motif :	Race ou couleur	Origine ethnique	Croyance	Sexe	Harcèlement sexuel	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social	Existence d'un casier judiciaire	Représailles violation du règlement intervenu ou aucun motif	**Total**	Pourcentage
EMPLOI															
Plaintes réglées	101	24	29	150	81	3	84	20	10	404	–	2	–	908	66
Plaintes rejetées/classées	45	17	3	45	18	–	22	13	2	101	2	3	2	273	20
Plaintes retirées	20	4	2	39	18	–	13	3	2	93	–	–	–	194	14
Total partiel	166	45	34	234	117	3	119	36	14	598	2	5	2	1375	100
LOGEMENT															
Plaintes réglées	15	4	1	7	–	–	13	15	59	5	20	–	–	139	87
Plaintes rejetées/classées	3	1	–	1	–	–	1	4	1	1	1	–	–	13	8
Plaintes retirées	4	–	–	–	–	–	–	1	2	–	–	–	–	7	4
Total partiel	22	5	1	8	–	–	14	20	62	6	21	–	–	159	100
SERVICES															
Plaintes réglées	23	6	4	12	–	2	6	12	8	43	–	–	–	116	67
Plaintes rejetées/classées	11	6	2	7	–	–	1	2	2	9	1	–	2	43	25
Plaintes retirées	4	1	–	2	–	–	2	1	–	5	–	–	–	15	9
Total partiel	38	13	6	21	–	2	9	15	10	57	1	–	2	174	100
CONTRATS, ASSOCIATIONS PROFESSIONNELLES, REPRESAILLES, VIOLATION DU REGLEMENT INTERVENU															
Plaintes réglées	5	–	–	5	–	–	1	1	–	2	–	–	10	24	43
Plaintes rejetées/classées	5	3	1	1	–	–	–	1	–	2	–	–	13	26	46
Plaintes retirées	2	1	–	–	–	–	–	1	–	–	–	–	2	6	11
Total partiel	12	4	1	6	–	–	1	3	–	4	–	–	25	56	100

TABLEAU 5 - Répartition des plaintes réglées par motif de discrimination

Règlement : / Motif :	Dommages-intérêts	Nombre de plaignants indemnisés	Offre immédiate d'un emploi ou d'une installation	Offre ultérieure d'un emploi ou d'une installation	Programme d'action positive	Colloques pour le personnel de défendeur	Révision des pratiques, méthodes et documents	Lettre de références ou correction des références	Lettre d'excuses adressée au plaignant	Déclaration écrite de politique de non-discrimination
Race ou couleur	$246,988	43	28	3	3	9	30	17	24	55
Origine ethnique	33,583	3	4	3	-	1	5	1	3	4
Croyance	108,850	8	11	-	-	2	15	4	2	4
Sexe et grossesse	95,336	51	32	6	5	2	30	20	12	51
Harcèlement sexuel	110,883	44	4	1	-	7	24	9	17	47
Orientation sexuelle	200	1	-	-	-	-	2	-	-	2
Age	47,257	21	19	-	2	2	34	4	8	31
Etat matrimonial	105,443	9	15	1	-	-	11	4	4	8
Etat familial	9,500	9	26	11	-	1	22	1	7	18
Infirmité	543,965	166	118	21	2	10	51	42	30	133
Etat d'assisté social	1,455	2	5	2	-	1	4	-	1	4
Existence d'un casier judiciaire	-	-	2	-	-	-	1	-	-	-
Représsailles/violation/aucun motif	40,312	8	4	-	-	1	1	2	4	5
Total	**$1,363,772**	**365**	**268**	**48**	**12**	**36**	**230**	**104**	**112**	**362**

RÉPARTITION DES PLAINTES PAR TYPE DE

RÈGLEMENT ET MOTIF DE DISCRIMINATION

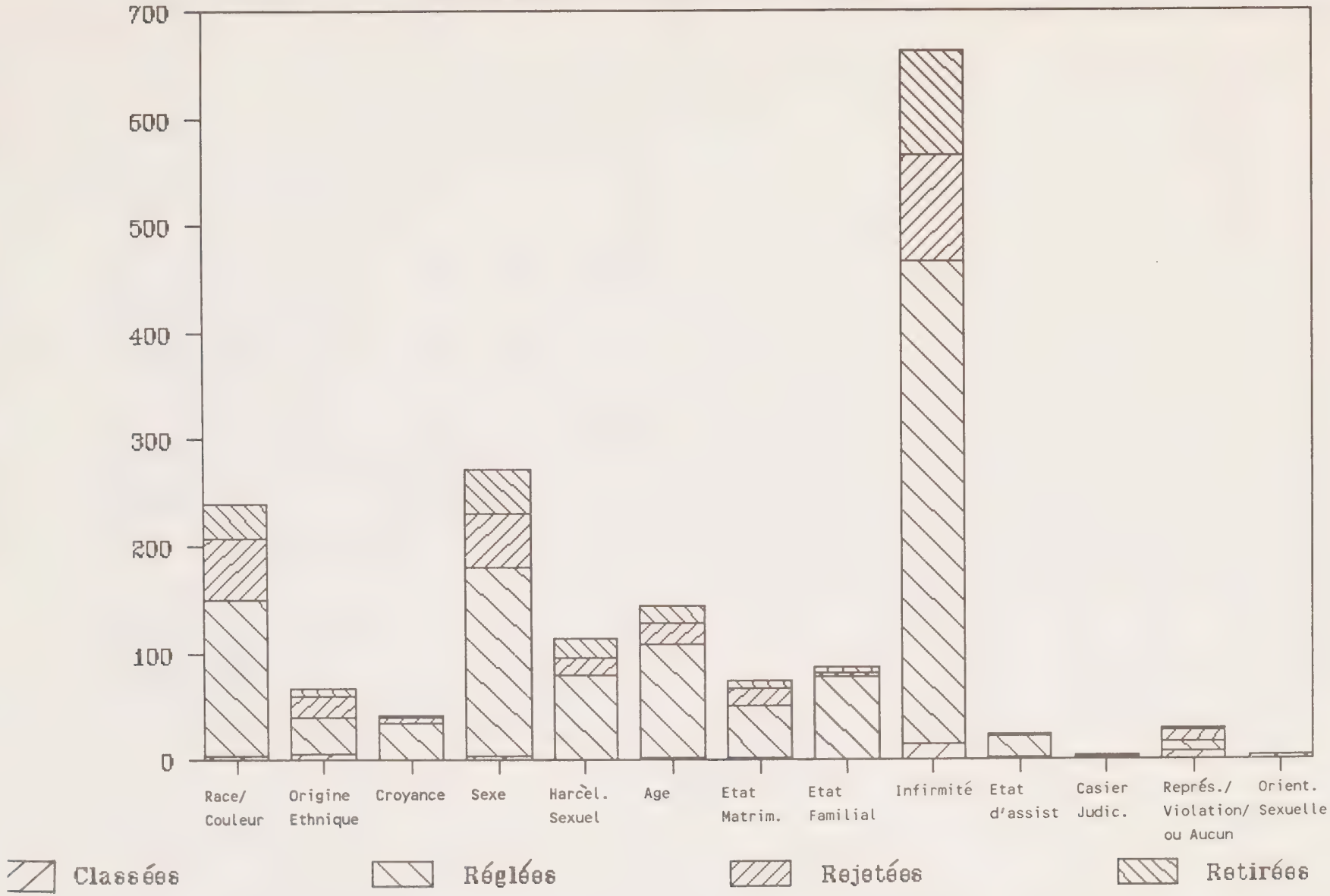
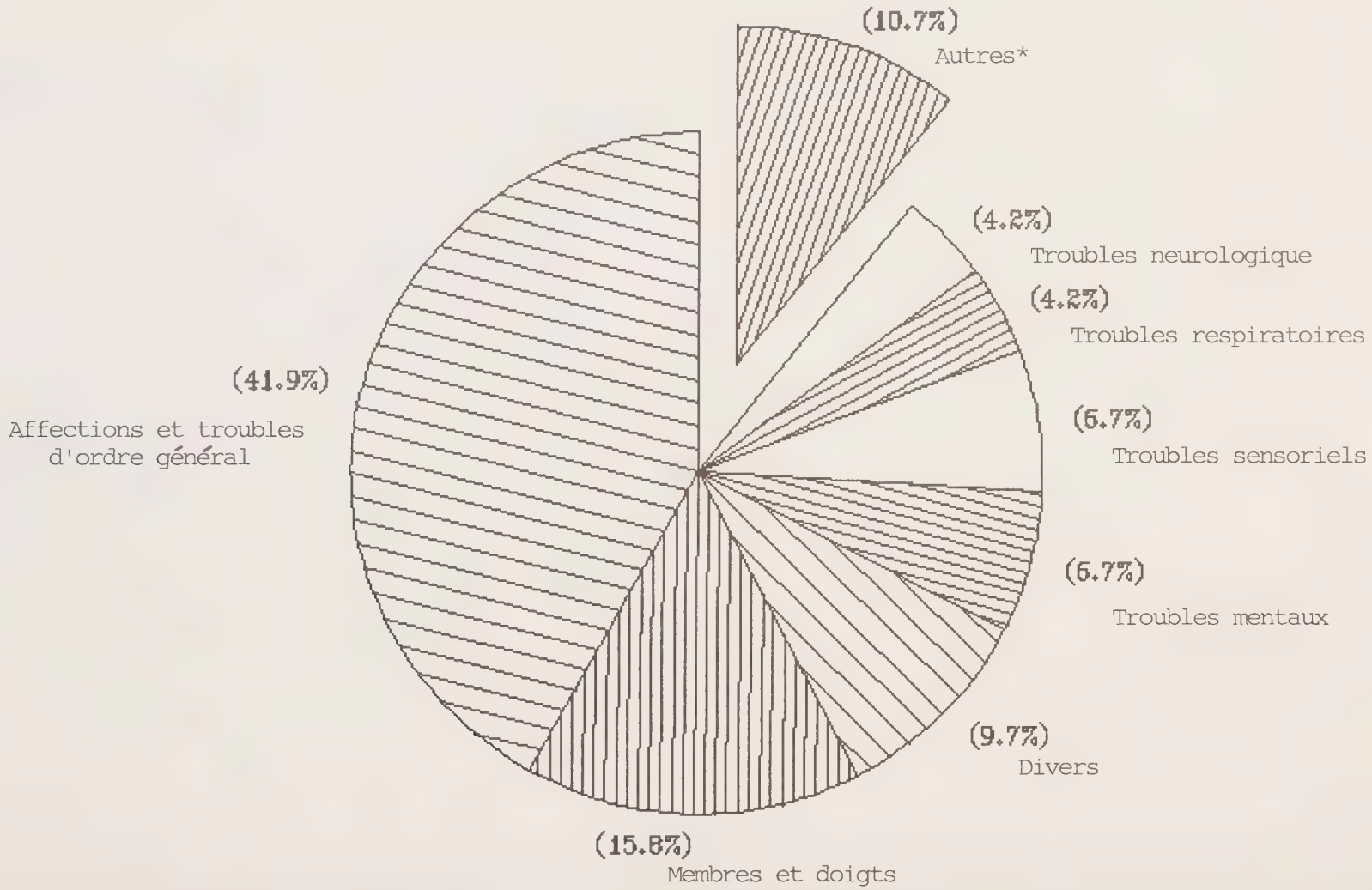


TABLEAU 3

RÉPARTITION DES PLAINTES

PAR TYPE D'INFIRMITÉ, 1987/88



* Troubles cardiovasculaires, troubles neuromusculaires, Difficultés d'apprentissage, Déficience mentale, Loi sur

TABLEAU 2 – Répartition des plaintes par motif de discrimination et domaine

Motif : / Domaine :	Race ou couleur	Origine ethnique	Croyance	Sexe	Harcèlement sexuel	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social (logement seulement)	Existence d'un casier judiciaire (emploi seulement)	Représailles ou violation du règlement intervenu	Aucun motif (art. 33)	**Total**	Pourcentage
Services	37	9	6	15	–	10	8	10	4	66	1	–	–	1	**167**	9
Logement	21	3	–	14	2	–	15	16	72	5	22	–	–	–	**170**	10
Contrats	3	1	–	–	–	–	1	3	–	1	–	–	–	–	**9**	1
Emploi	158	44	20	206	144	9	111	36	24	654	3	1	–	2	**1412**	79
Associations professionnelles	5	2	–	3	–	1	–	–	–	4	–	–	–	–	**15**	1
Représailles	–	–	–	–	–	–	–	–	–	–	–	–	13	–	**13**	1
Violation du règlement intervenu	–	–	–	–	–	–	–	–	–	–	–	–	–	–	**0**	–
Total	**224**	**59**	**26**	**238**	**146**	**20**	**135**	**65**	**100**	**730**	**26**	**1**	**13**	**3**	**1786**	100
Pourcentage	13	3	1	14	8	1	8	4	6	41	1	–	1	–	100	
Plaintes fondées sur les nouvelles dispositions du code :																
Discrimination indirecte	6	1	–	5	–	–	–	2	2	2	–	–	–	–	**18**	23
Discrimination fondée sur l'association	6	–	–	3	1	–	–	2	1	–	–	1	–	–	**14**	20
Intention d'enfreindre un droit	–	–	–	2	–	–	1	–	–	–	–	–	–	–	**3**	2
Publicité	1	–	2	–	–	–	1	2	–	–	–	–	–	–	**6**	6
Demandes d'emploi	–	1	2	1	–	–	15	3	1	4	–	–	–	–	**27**	49
Total	13	2	4	11	1	–	17	9	4	6	–	1	–	–	**68**	100

TABLEAU 1 - Répartition des plaintes par région et motif de discrimination, 1987/88

Motif: / Région:	Race ou couleur	Origine ethnique	Croyance	Sexe	Harcèlement sexuel	Orientation sexuelle	Age	Etat matrimonial	Etat familial	Infirmité	Etat d'assisté social (logement seulement)	Existence d'un casier judiciaire	Représailles	Violation du règlement intervenu	Aucun motif	**Total**	Pourcentage (%) de l'ensemble
Est	14	8	5	30	18	4	15	11	11	78	6	0	1	0	0	**201**	11%
Hamilton-Niagara	21	3	-	33	20	3	15	13	21	150	6	0	2	0	0	**287**	16%
Nord	24	10	3	32	14	3	12	12	11	78	4	0	0	0	2	**205**	11%
Sud-Ouest	18	9	2	38	25	1	24	6	12	92	2	1	1	0	0	**231**	13%
U.P.H.	0	0	0	0	0	0	0	0	0	24	0	0	0	0	0	**24**	1%
Toronto-Centre	45	15	11	32	22	6	27	8	12	89	4	0	3	0	1	**275**	15%
Toronto-Est	43	7	3	36	18	3	27	10	23	103	1	0	1	0	0	**275**	15%
Toronto-Ouest	59	7	2	37	29	0	15	5	10	116	3	0	5	0	0	**288**	16%
Total (%)	224 13%	59 3%	26 1%	238 14%	146 8%	20 1%	135 8%	65 4%	100 6%	730 41%	26 1%	1 -	13 1%	0 -	3 -	**1786** 100%	100%

STATISTIQUES, 1987/88

Repartition des plaintes

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paient des cadres supérieurs, des associations d'administrateurs de personnel et des agents de relations industrielles.

Plusieurs initiatives importantes en matière d'équité d'emploi ont servi à régler certains cas : un grand fabricant et une commission des transports en commun ont convenu de fixer des objectifs numériques pour l'emploi des femmes; un conseil scolaire et une municipalité régionale ont fait appel à la Commission pour les aider à créer un programme d'action positive pour les femmes et les membres des minorités raciales.

Région du Sud-Ouest

La région du Sud-Ouest comprend un certain nombre de centres urbains à vocation industrielle ou commerciale desservant la région agricole avoisinante. Cette région comprend aussi huit réserves autochtones. L'économie y est donc diversifiée : des trois grands fabricants d'automobiles à Windsor aux importants secteurs commerciaux et grandes entreprises, sans oublier les usines de fabrication de pièces d'automobile à London et Kitchener, et l'agriculture.

Les programmes de la Commission sont dispensés par les bureaux de district de Windsor, London et Kitchener, et par le bureau régional situé à London. La région comprend Simcoe et Brantford, et s'étend vers l'est jusqu'à Guelph pour continuer en suivant la route 6 jusqu'à Owen Sound et la péninsule Bruce.

Les centres les plus importants s'adaptent lentement à l'évolution de la population et aux minorités raciales qui viennent se joindre à la main-d'oeuvre locale. En outre, les femmes sont de plus en plus présentes sur le marché du travail. Deux cent trente et une plaintes ont été déposées dans la région au cours de l'exercice 1987-1988, soit 13 p. 100 du total. Les plaintes de discrimination fondée sur un handicap et le sexe, 92 et 38 respectivement, étaient les plus nombreuses.

Au cours de l'exercice et dans le cadre de ses activités d'éducation du public, la région a participé à une conférence sur l'équité d'emploi, à London, parrainée par la Direction générale des rapports entre les races. Environ 100 personnes ressources ont reçu des cours de formation sur les moyens de remédier à la discrimination systémique. Le directeur régional faisait partie du comité de planification de la conférence et il présidait la séance sur la collecte des données.

Région de Hamilton-Niagara

La région de Hamilton-Niagara a été constituée en 1984. Le nombre croissant de programmes touchant les droits de la personne dans l'ancien territoire de la région du Sud-Ouest ne permettait plus à la Commission d'y répondre adéquatement.

Le bureau régional se trouve à Hamilton et il existe un bureau de district à St. Catharines. La région comprend le territoire du «Golden Horseshoe» et du grand Hamilton, y compris Burlington, Simcoe et Port Dover. La région possède de nombreuses industries et un riche secteur agricole. Le nombre de plaintes déposées au cours de l'exercice s'élève à 287, soit 16,5 p. 100 de toutes les plaintes déposées dans l'ensemble de la province.

Au cours de l'exercice, les plaintes de discrimination fondée sur un handicap sont passées de 39 au cours de l'exercice précédent à 150 en 1987-1988.

Le personnel de la région a organisé un certain nombre d'ateliers et d'autres projets touchant l'égalité des chances d'emploi, auxquels partici-

Dans le cadre du programme d'éducation du public, la région a coparrainé la Journée des droits de la personne, le 10 décembre, avec la Commission canadienne des droits de la personne et la Commission québécoise des droits de la personne. Ce projet de collaboration avait été mis sur pied en 1986 et l'on s'attend à ce que les trois commissions organisent conjointement d'autres projets et séminaires sur des sujets d'intérêt commun.

Région du Nord

La région du Nord compte cinq bureaux : un bureau régional à Sudbury et quatre bureaux de district à Kenora, Thunder Bay, Sault Ste. Marie et Timmins.

Cette région comprend 85 p. 100 du territoire de la province et 10 p. 100 seulement de sa population. C'est pourquoi le personnel régional et les commissaires poursuivent leurs efforts pour étendre leurs programmes aux collectivités qui n'ont pas directement accès aux services offerts par les cinq bureaux régionaux. De plus, un service téléphonique sans frais est offert aux résidents du Nord de l'Ontario. Le nombre de plaintes déposées dans cette région s'élevait à 205, soit 11 p. 100 du total. Les plaintes de discrimination fondée sur un handicap, qui se chiffraient à 78, étaient les plus nombreuses.

La région du Nord s'étend de l'est à l'ouest, de Mattawa à la frontière du Manitoba, et du sud au nord, de Parry Sound à la Baie d'Hudson. Elle compte 800 000 habitants dont 80 000, soit 10 p. 100, sont des autochtones. Quatre-vingt pour cent des plaintes de discrimination fondée sur la race et la couleur émanent des autochtones. Par ailleurs, 30 p. 100 des résidents sont francophones. Les services sont offerts en français et en anglais, ainsi qu'en Ojibway et Mohawk.

La région du Nord est une région d'industries basées sur les ressources, mais possède très peu d'usines ou d'industries secondaires pour soutenir les industries primaires. Tout changement dans la demande peut donc anéantir complètement une industrie et créer un sérieux problème de chômage. C'est d'ailleurs ce qui est arrivé à Elliot Lake : quand la demande en uranium a cessé au début des années 1960, la communauté s'est éteinte pour renaître vers le milieu des années 1970 quand la demande d'uranium a repris.

En plus d'intensifier ses programmes, la région a étendu ses services de consultation et d'éducation du public. Au cours de l'exercice, le responsable des droits de la personne à Timmins a mis sur pied un programme de relations interculturelles, qu'il a présenté aux membres des Forces policières de Timmins. Le personnel de la région a également participé à une conférence sur les relations communautaires et interraciales, parrainée par la Direction générale des rapports entre les races dans le Nord-Ouest de l'Ontario.

Le directeur régional a participé à une téléconférence à l'échelle de la province sur les droits des personnes handicapées, parrainée par le Centre d'aide et de défense juridique pour les handicapés.

Dans le cadre des programmes touchant l'éducation du public et les consultations, la région a participé à un grand nombre d'activités avec les établissements d'enseignement, les associations d'administrateurs de personnel, les organismes communautaires, les cadres supérieurs et les employeurs. Elle a surtout cherché à réduire le nombre de dossiers, le nombre de plaintes provenant de cette région très industrialisée ayant augmenté considérablement ces dernières années.

Le règlement de nombreuses plaintes se rattachait à l'action positive et deux résolutions ont eu pour résultat que les entreprises intimées nomment un médiateur et un comité des droits de la personne pour éliminer la discrimination sur les lieux de travail.

Région de l'Est

La région de l'Est est située à l'est de Trenton et s'étend, en direction du nord, du lac Ontario et du fleuve Saint-Laurent jusqu'à la frontière du Québec. La région comprend la vallée de l'Outaouais, du sud de Deep River jusqu'à Hawkesbury. Son bureau principal se trouve à Ottawa et son bureau de district est situé à Kingston.

La région de l'Est est située au coeur d'un district bilingue. Les régions rurales, comme les centres urbains, sont maintenant sensibilisées aux droits de la personne et un nombre accru de francophones unilingues exercent les droits qui leur sont reconnus par le code.

La plus forte concentration de population se trouve dans la municipalité régionale d'Ottawa-Carleton qui compte presque un demi-million d'habitants. Le type des plaintes déposées reflète la diversité de la main-d'oeuvre. Ottawa, capitale nationale du Canada, compte un groupe important et diversifié de professionnels travaillant dans des organismes gouvernementaux et non gouvernementaux ainsi que dans les corps diplomatiques et les établissements d'enseignement supérieur. La région comporte également de nombreuses industries de services (consultation, haute technologie, tourisme). La région de Kingston et la vallée de la voie maritime sont plus industrialisées, et un certain nombre d'usines de moyenne importance et de petites entreprises y exercent leurs activités.

Le volume des plaintes est allé en augmentant depuis l'établissement de cette région en 1978. Au cours des quatre dernières années, le nombre de plaintes a augmenté de 122 p. 100.

Deux cent une plaintes, soit 11 p. 100 de toutes les plaintes, ont été déposées dans cette région au cours de l'exercice 1987-1988. Les plaintes de discrimination fondée sur un handicap ou sur le sexe constituaient les deux plus importantes catégories, soit 78 et 30 respectivement pour cette région, suivies par les plaintes de discrimination fondée sur le harcèlement sexuel.

L'un des cas réglés par la commission d'enquête impliquait un membre de l'Église adventiste du 7e jour, qui avait été renvoyé parce qu'il refusait de se présenter au travail le samedi, qui est pour lui la journée du sabbat. Les négociations avant l'audience aboutirent à la réintégration de l'employé à temps plein, avec congé le samedi; tous ses droits et son ancienneté lui furent reconnus et il reçut une indemnité de 25 000 $.

tante. Le nombre de plaintes a également augmenté ces dernières années dans la région de Peterborough-Lindsay.

La région a enregistré 275 plaintes, soit 15 p. 100 de toutes les plaintes reçues par la Commission au cours de l'exercice. De ce nombre, 103 étaient fondées sur un handicap, 43 sur la race, 54 sur le harcèlement sexuel et sur le sexe, 27 sur l'âge, et le reste, soit 52, était réparti entre toutes les autres causes de discrimination.

Malgré l'augmentation du travail, le personnel a assuré un important programme d'éducation du public dans la Communauté urbaine de Toronto et les principaux centres de la région, tels Oshawa et d'autres centres situés au bord du lac Ontario, et les districts de Peterborough et Lindsay. Dans la plupart de ces centres, la Commission a organisé des conférences, colloques et ateliers dans les écoles avec les grands fabricants, groupes d'employés, associations d'administrateurs de personnel et municipalités. Parmi les programmes éducatifs présentés au cours de l'exercice, il convient de citer une série de séminaires pour les femmes qui désirent retourner au travail, organisés avec la participation de la Main-d'oeuvre du Canada. La région a également préparé, en collaboration avec le Comité des relations communautaires et interraciales de Peterborough, un manuel sur la tenue d'ateliers sur les relations interraciales et multiculturelles. La Commission favorise l'établissement de liens étroits avec ces divers groupes et organismes.

Les bureaux de la Commission dans cette région jouissent de la considération des communautés à la fois diverses et dynamiques qui s'y trouvent, notamment une nombreuse communauté chinoise à Agincourt et d'importantes communautés originaires de l'Inde à Scarborough et Toronto-Est.

Région de Toronto-Ouest

En 1982, les bureaux de cette région ont été déménagés à Mississauga. Toronto-Ouest comprend la région de Peel et une partie de la région de Halton jusqu'à Oakville, au sud et à l'ouest. Elle s'étend vers le nord, jusqu'à la région de Nottawasaga Bay.

La région de Toronto-Ouest est fortement axée sur l'industrie manufacturière et connaît un essor industriel et une croissance démographique rapides. Elle dessert environ un million d'habitants. En outre, la Communauté urbaine de Toronto a reçu 838 plaintes au cours de l'exercice, soit près de la moitié des plaintes déposées dans toute la province.

Les plaintes de discrimination fondée sur un handicap s'élevaient à 116. Celles fondées sur le sexe s'élevaient à 66. Le nombre de plaintes déposées s'élevait à 288, soit 16,5 p. 100 du total. Il s'agit là d'un nombre beaucoup plus élevé que dans toute autre région.

Une plainte concernant l'obligation pour l'employeur de faire des efforts raisonnables pour répondre aux besoins d'employés handicapés est actuellement étudiée par une commission d'enquête. Une autre plainte, traitant des obligations religieuses des employés et de ce que pourrait offrir l'employeur, est actuellement en cours.

D'autres directives concernant les annonces d'offres d'emploi ont été établies pour les employeurs et les journaux, en conformité avec le paragraphe 22(1) du code. Ce paragraphe stipule que si une offre d'emploi publiée ou affichée classifie ou spécifie, directement ou indirectement, des qualifications reconnues discriminatoires, cette offre porte atteinte au droit à un traitement égal en matière d'emploi.

Région de Toronto-Centre

Cette région a été créée en 1981 en raison du nombre croissant de plaintes que les deux régions administratives (Toronto-Est et Toronto-Ouest) de la Communauté urbaine de Toronto n'étaient plus en mesure de régler efficacement. La région de Toronto-Centre s'étend d'ouest en est, de la rue Keele à la rue Jarvis et l'avenue Bayview, et du centre-ville au nord, jusqu'à Barrie et Burk's Falls. Dans cette région, sont situés les bureaux principaux du gouvernement de l'Ontario et de nombreux syndicats et industries importants ainsi que de grands hôpitaux, des hôtels, des entreprises commerciales et des établissements d'enseignement.

Le nombre de plaintes enregistrées durant l'exercice 1987-1988 s'élève à 275.

Durant l'exercice 1987-1988, la région a vu le nombre de plaintes de discrimination fondée sur un handicap passer à 89. Elles étaient suivies par les plaintes de discrimination fondée sur la race qui s'élevaient à 45.

Par ailleurs, en matière d'éducation du public, le personnel régional a établi des relations de travail et collaboré avec des agences de placement, des syndicats, des établissements d'enseignement et des organismes de services sociaux dans la région de Toronto.

Au cours de l'année, un grand nombre de plaintes ont dépassé le cadre individuel et pris une dimension sociale plus large. On peut citer parmi les sujets traités, les règlements municipaux qui favorisent les logements «réservés aux adultes», les politiques touchant les congés de paternité et d'adoption, l'assurance-maladie couvrant les couples d'homosexuels, le refus de la part d'un organisme de bienfaisance de consacrer des fonds à la prestation de services aux homosexuels, les associations d'enseignants qui séparent les deux sexes et la retraite obligatoire à l'âge de 65 ans.

Région de Toronto-Est

En 1982, les bureaux de la région de Toronto-Est déménageaient du centre-ville à Scarborough, offrant ainsi un meilleur accès aux services de la Commission. Le nombre accru de plaintes et une plus grande participation du public depuis la décentralisation montrent bien que les bureaux répondent aux besoins de la région de Scarborough. Depuis leur ouverture il y a six ans, ces bureaux reçoivent un nombre accru de plaintes provenant de centres situés au-delà de la Communauté urbaine de Toronto.

La région inclut la banlieue est de Toronto et s'étend vers le nord jusqu'au parc Algonquin et Huntsville, et vers l'est jusqu'à Trenton. Sont les plus actives la région de Toronto-Scarborough et les importantes localités d'Ajax, de Whitby et d'Oshawa, où l'industrie automobile est impor-

ACTIVITÉS RÉGIONALES
1987-1988

La Commission dispense ses programmes dans sept régions par l'entremise de quinze bureaux de district disséminés dans toute la province. Le chapitre «Statistiques» de ce rapport comporte des tableaux illustrant toutes les plaintes déposées et réglées durant l'exercice.

Au cours de l'exercice, la Commission a pris diverses initiatives et renforcé certains programmes existants afin d'accélérer le processus de règlement des plaintes. L'une des initiatives importantes a été la décision de régler les plaintes dès les étapes préliminaires, en utilisant la procédure de priorité des cas. Cette méthode comporte une intervention en début d'affaire permettant de remédier aux torts subis par l'offensé et d'obtenir un engagement de l'offenseur à prendre les mesures nécessaires pour éliminer tout comportement discriminatoire.

D'autre part, la Commission utilise davantage l'article 33 du code qui permet de procéder à une sélection préliminaire pour éliminer les plaintes non fondées avant qu'elles ne passent par toutes les étapes de la procédure. L'article 33 stipule que la Commission a le droit de refuser de traiter une plainte si elle ne relève pas de sa compétence; si celle-ci est insignifiante, superficielle, vexatoire ou de mauvaise foi; si les faits sur lesquels la plainte est fondée remontent à plus de six mois avant le dépôt de la plainte; ou s'il existe une autre loi plus appropriée pour juger du cas, dans les circonstances.

Parmi les initiatives d'éducation du public et autres mesures de la Section de conciliation et du respect du code figurent les suivantes :

Des directives concernant les plaintes de discrimination en matière de grossesse ont été établies afin que les dispositions du code à cet égard soient appliquées de façon équitable et uniforme dans toute la province. Ces directives seront distribuées aux employeurs, syndicats, groupes de femmes et autres organismes, au cours de l'exercice 1988-1989.

Des séances de consultation et d'éducation ont été organisées avec les locateurs, les propriétaires de logements en copropriété, les directeurs responsables des annonces placées dans les journaux et les organisations pour les droits des locataires, afin de leur faire connaître les récentes modifications apportées au code stipulant que les contrats de location ou d'achat ne doivent plus porter la mention «réservé aux adultes». La Commission a déposé un certain nombre de plaintes contre les locateurs et les propriétaires de logements en copropriété qui ne s'étaient pas conformés à ces dispositions du code. La Commission a pris les mêmes mesures en ce qui concerne la discrimination en matière de logement contre les personnes âgées de 16 et 17 ans qui ne sont pas sous l'autorité parentale.

Une ébauche de politique contre le harcèlement sexuel a été établie par le personnel de la région du Nord, ainsi que des directives permettant à l'employeur de remédier à cette forme de discrimination sur les lieux de travail. Cette ébauche sera mise au point et distribuée aux employeurs, syndicats et autres organismes au cours de l'exercice 1988-1989.

Jugeant qu'il s'agissait de discrimination, la commission ne condamna pas M. Lawless, mais ordonna à M. Leclaire de verser 500 $ d'indemnité à chaque plaignant pour souffrances morales, et elle ordonna à M. Montgomery, responsable en dernier ressort de la politique discriminatoire, de verser la somme de 1 000 $ à chacun des plaignants.

désavantagé quant aux possibilités de jouer au hockey. Toutefois, ceci ne signifie pas que toutes les joueuses doivent être confinées à des équipes de l'OWHA; elles ont la possibilité de jouer dans une équipe masculine.

Au cours de l'audience, la commission entendit le témoignage d'experts médicaux et d'athlètes qui déclarèrent qu'avant d'atteindre la puberté, une jeune fille normale peut rivaliser avec succès dans les sports de contact, avec des garçons prépubères du même âge. Toutefois, vers l'âge de 14 ou 15 ans, les garçons deviennent plus forts et plus corpulents et en général, dans de tels sports, ils ont l'avantage sur les filles. Il existe cependant des similitudes entre les sexes et certaines femmes-athlètes peuvent, même après la puberté, rivaliser avec des concurrents du sexe masculin.

La commission ordonna qu'on donne à Justine la possibilité d'être sélectionnée par une équipe de son choix et qu'une place lui soit accordée si elle avait les qualités requises.

Il fut ordonné à la MTHL, l'OHA et l'OWHA de ne pas s'opposer au droit de Justine de participer aux compétitions et d'obtenir un placement égal à celui des garçons. Il fut interdit à l'OHA et à la MTHL de restreindre de quelque façon que ce soit la participation des filles au hockey. La commission ordonna également que l'OWHA soit déclarée programme d'action positive, tel que défini par le code, pour permettre à l'organisation d'en limiter l'accès aux membres du sexe féminin.

Tous les bureaux de l'OHA, la MTHL et l'OWHA ouverts au public en Ontario doivent placer des affiches de la Commission ontarienne des droits de la personne affirmant leur politique non discriminatoire.

Rossetti and Lanigan v. Montgomery, Lawless and Leclaire

M^me^ Lanigan et M. Rossetti, Canadiens autochtones, s'étaient vu refuser le service dans un bar d'Ottawa situé dans l'édifice où ils travaillaient comme employés du gouvernement fédéral.

Ils affirmèrent que la serveuse qui avait pris leur commande avait parlé à M. Leclaire, le gérant du bar, avant de commander les verres au barman, M. Lawless. Dans son témoignage, M. Lawless dit que la serveuse lui avait demandé «Que dois-je faire, Reg (Leclaire) ne veut pas que je serve de boissons aux Indiens». Le barman questionna M. Leclaire à cet égard, affirmant qu'il était choqué d'une telle attitude, d'autant plus que M. Rossetti et M^me^ Lanigan avaient toujours été de bons clients. M. Leclaire persista dans son refus. Gêné, le barman informa ces deux personnes qu'il ne pouvait les servir en vertu d'une politique voulant qu'on ne serve pas les autochtones. Il témoigna qu'il avait dû obéir pour ne pas perdre son poste.

Les plaignants et un de leurs collègues s'adressèrent alors à M. Montgomery, propriétaire du bar, qui ne manifesta aucune sympathie. La commission jugea qu'il avait été arrogant et indifférent devant l'éventualité qu'une plainte puisse être logée auprès de la Commission des droits de la personne.

-- les intimés devaient assurer à la Commission, par écrit, qu'ils se conformeraient aux dispositions du code, sans discrimination envers les personnes qui, en raison de cécité ou de troubles visuels, avaient besoin d'un chien;

-- les intimés devaient afficher des résumés du code à un endroit bien en évidence, à la vue du public;

-- les intimés devaient adresser une lettre d'excuses à la plaignante;

-- les intimés et le personnel du restaurant Argus Seafood and Steak House devaient assister à un atelier animé par un représentant de la Commission;

-- les intimés devaient payer à M^me^ Pinder 1 000 $ en dommages-intérêts et pour atteinte à sa dignité, à la suite de l'incident.

Blainey v. The Ontario Hockey Association, the Metropolitan Toronto Hockey League et al.

Une commission d'enquête avait jugé que Justine Blainey avait été traitée injustement et avait été l'objet de discrimination fondée sur le sexe parce qu'elle n'avait pas eu le droit de jouer dans une équipe masculine de hockey, les Canucks d'Etobicoke. Justine, qui avait 13 ans à l'époque, avait été sélectionnée et on lui avait offert de se joindre à l'équipe. L'équipe faisait partie de la MTHL, elle-même membre de l'OHA. Les règlements de cette association stipulaient que les femmes devaient jouer dans des équipes de femmes, sauf si elles étaient âgées de moins de 12 ans et s'il n'existait localement aucune autre ligue de l'Ontario Womens Hockey Association (OWHA) où elles pourraient jouer.

L'article 1 du code stipule le droit de quiconque d'être exempt de discrimination en matière de services, de biens et d'installations, fondée, entre autres raisons, sur le sexe. Toutefois, au moment où Justine avait déposé sa première plainte, les athlètes-amateurs étaient exclus de cette disposition en vertu du paragraphe 19(2) du code.

Justine demanda aux tribunaux de déclarer que le paragraphe 19(2) du code était contraire aux dispositions sur les droits à l'égalité de la Charte canadienne des droits et libertés. La Cour d'appel de l'Ontario soutint cette objection. La Commission poursuivit alors sa cause en la référant à une commission d'enquête.

Depuis, le paragraphe 19(2) du code a été déclaré inconstitutionnel et la commission d'enquête a jugé que dorénavant toute discrimination fondée sur le sexe en matière d'activités sportives est contraire à la loi en Ontario, à moins que lesdites activités puissent être considérées comme un programme spécial d'action positive permis aux termes du code.

La commission soutint que le programme offert par l'OWHA est un programme spécial puisqu'il a pour but d'aider les personnes de sexe féminin, groupe

fois, ni les employés de la compagnie Atlas Steel, ni les membres du conseil d'administration de l'intimé, du comité de crédit ou du comité de supervision ne pouvaient être considérés comme employeurs ni employés aux termes de l'alinéa 23(d) du code.

L'intimé dut verser au plaignant la somme de 625 $ pour perte de salaire, 1 137,46 $ pour frais de déplacement, l'intérêt sur cette somme et les frais judiciaires.

BIENS, SERVICES ET INSTALLATIONS

Handicap, sexe, ascendance

The Lanark, Leeds and Grenville County Roman Catholic School Board v. The Ontario Human Rights Commission et al.

La Cour divisionnaire de la Cour suprême de l'Ontario annula une décision de la commission d'enquête qui avait jugé que le conseil scolaire avait fait preuve de discrimination envers trois élèves, déficients mentaux, en refusant de leur dispenser le programme d'éducation complet à l'école séparée. Le conseil expliqua qu'il n'est pas équipé pour répondre aux besoins de personnes mentalement handicapées et qu'il a donc «renoncé» à dispenser ces services et paie le conseil des écoles publiques pour fournir ces services à ces élèves.

La commission d'enquête jugea que cette pratique était discriminatoire parce qu'elle refusait aux trois enfants une éducation catholique, en raison de leur handicap. Elle jugea aussi que le conseil scolaire n'avait pas fait d'efforts raisonnables pour répondre sans difficultés indues aux besoins des élèves.

Quand il en a appelé de la décision de la commission d'enquête, le conseil scolaire s'est défendu de toute discrimination envers les élèves, en se fondant sur l'article 16 du code. Cet article stipule qu'il n'y a pas manquement au code lorsque les lieux et services ne conviennent pas à la personne en raison de son handicap.

La Cour soutint l'argument de l'intimé et annula le premier jugement de discrimination. Une autre raison à l'appui de la décision de la Cour se fondait sur le fait que la plainte avait été logée à un moment où le conseil scolaire intimé ne pouvait pas, sans décret, inscrire les trois élèves ni se charger de leur éducation.

Pinder v. Argus Seafood and Steak House, Simos

M^me^ Pinder, qui est aveugle, alléguait qu'on lui avait refusé l'entrée du restaurant de l'intimé parce qu'elle était accompagnée d'un chien d'aveugle. Les parties conclurent un accord avant que la commission d'enquête ne se réunisse. Conformément à l'entente, la commission ordonna ce qui suit :

Reconnaissant que la raison primordiale du renvoi de Mme Broere était une réduction légitime de personnel, la commission jugea que l'un des facteurs dans le choix des employés à licencier était le nombre et l'âge de leurs enfants.

Jugeant qu'il y avait eu discrimination, la commission ordonna à l'intimé de verser à Mme Broere une indemnité pour perte de revenus en raison de son licenciement et 500 $ pour souffrances morales.

Szabo v. Atlas Employees Welland Credit Union

M. Szabo alléguait que l'intimé avait refusé d'étudier sa demande d'emploi comme préposé au crédit parce que son père, William Szabo, travaillait à la Atlas Steel Company, et était membre du comité de supervision de l'intimé. Une politique en matière de personnel, en vigueur depuis plus de 30 ans, empêchait l'intimé d'engager des parents de leurs employés, y compris ceux qui avaient un lien parent-enfant. M. Szabo alléguait la discrimination en matière d'emploi, fondée sur son état familial.

La seule justification possible pour l'intimé est contenue dans l'alinéa 23(d) du code, stipulant que l'employeur peut accorder ou refuser un emploi ou une promotion à une personne qui est le conjoint, l'enfant ou le parent de l'employeur ou d'un employé. L'intimé soutint que cette politique est appliquée par beaucoup d'autres caisses de crédit pour éviter les conflits d'intérêt dans des institutions où le nombre de membres est limité, et lorsque les membres, de par le fait et de par la loi, possèdent et contrôlent ces institutions.

Cependant, la Commission considérait qu'il n'existe pas de justification possible de la discrimination fondée sur l'état familial.

La commission d'enquête tint compte de la nature de l'intimé pour déterminer si William Szabo pouvait être considéré comme l'employeur de son fils Paul ou comme son employé, au sens de la justification stipulée à l'alinéa 23(d) du code.

La commission constata que la Loi sur les credit unions stipulait qu'une caisse populaire devait être constituée en société distincte. Celle-ci ne doit, en aucun cas, être contrôlée par l'entité qui représente ses liens d'association (dans ce cas, Atlas Steel). L'intimé constitue une entité distincte de la compagnie, tant en fait que par la loi.

Par ailleurs, la commission jugea qu'il n'existait aucun fondement juridique selon lequel William Szabo, en tant que membre du comité de supervision, pouvait être décrit comme employeur ou employé de l'intimé.

La commission retint donc que les justifications de l'alinéa 23(d) du code ne s'appliquaient pas à l'intimé et qu'il y avait eu violation du code.

La commission ordonna à l'intimé de cesser toute discrimination en matière d'emploi fondée sur l'état familial. À cet égard, les exceptions citées à l'alinéa 23(d) du code demeuraient applicables pour l'intimé. Toute-

Horton v. The Regional Municipality of Niagara, Odell and Orvidas

Mme Horton avait été renvoyée vers la fin de sa période de probation de deux mois comme aide soignante dans un centre pour personnes âgées, dirigé par la municipalité intimée. On l'avertit que son licenciement était dû à son dossier médical, qui révélait qu'elle souffrait d'hypertension et d'obésité. Elle alléguait la discrimination en matière d'emploi fondée sur un handicap.

La commission d'enquête refusa de décider si l'obésité était un handicap aux termes du code, parce qu'elle n'avait pas de renseignements suffisants pour déterminer si l'obésité était ou non due à un trouble congénital ou à une maladie, selon la définition de «handicap» dans le code. La commission décida qu'aux termes du code, l'hypertension était un handicap.

L'intimé avait indiqué que le handicap de Mme Horton avait influé sur la décision de licenciement et ne prétendait pas que l'hypertension l'empêchait d'accomplir son travail de façon appropriée. L'intimé ne prétendait donc pas que l'absence d'hypertension était une qualification professionnelle sérieuse pour le poste d'aide soignante. La commission rejeta l'argument de l'intimé selon lequel la plaignante aurait été renvoyée de toute façon, en raison de son rendement médiocre. La commission déclara que même si un manquement au code n'était qu'une raison parmi d'autres, du licenciement en question, la décision tout entière en était entachée.

Ayant constaté qu'il y avait eu manquement au code, l'intimé dut verser à Mme Horton une indemnité de 2 032,80 $ pour perte de salaire, 750 $ pour souffrances morales et 862,66 $ d'intérêts.

Broere v. W.P. London and Associates, Ltd., McConvey and Brooks

Mme Broere avait été renvoyée peu après son retour au travail, suivant un congé de maternité. Elle alléguait que son renvoi était dû à son état familial et que la naissance de son enfant était un facteur qui y avait contribué.

Il n'y avait cependant pas de doute que son volume d'affaires ayant baissé, la compagnie avait dû procéder à de nombreux licenciements parmi ses commis de bureau. Il était également entendu que le travail de Mme Broere était excellent.

Mme Broere affirma que l'un des cadres supérieurs de l'entreprise lui avait dit : «...puisque vous avez un enfant, nous supposons que vous partirez avant les autres pour en prendre soin». On lui avait dit que la compagnie cherchait des employés sur lesquels elle pouvait compter à long terme.

La commission d'enquête entendit des témoignages à l'effet que cinq autres commis avaient été renvoyées en même temps que Mme Broere. Quatre d'entre elles venaient de retourner au travail après un congé de maternité. L'une des femmes déclara qu'elle avait demandé à un cadre supérieur si le fait qu'elle avait deux enfants avait contribué à son renvoi. Il lui répondit qu'il s'agissait d'un facteur qui avait influé sur la décision de la compagnie.

-- d'afficher des résumés du code à la vue de tous les employés du restaurant;

-- de soumettre à la Commission des droits de la personne, Division des rapports entre les races, les mesures prises pour recruter et embaucher des membres des groupes minoritaires à des postes à l'avant du restaurant, en particulier pour servir aux tables. Si les conditions existant en 1985 demeuraient les mêmes, des mesures devraient être prises pour redresser la situation.

Il fut conseillé à la Commission de demander au président de la commission d'enquête de prendre d'autres mesures au besoin. La commission d'enquête demeure saisie de l'affaire pour les deux années à venir.

Rampersad v. Vintage Grand Touring Automotives, Spagnuolo and Witte

M. Rampersad, un Noir d'ascendance indienne et originaire de la Trinité, alléguait la discrimination en matière d'emploi fondée sur la race, la couleur, l'ascendance, le lieu d'origine et l'origine ethnique parce que son patron avait embauché des personnes de race blanche moins compétentes que lui pour combler des postes de supervision, sans donner la chance à M. Rampersad ni à aucun autre Noir de remplir l'un de ces postes.

M. Rampersad travaillait à l'atelier de débosselage, à sabler et peindre les voitures. Il avait de l'expérience dans ces deux tâches, ayant déjà travaillé dans ce domaine. Malgré son expérience et sa compétence indiscutables, la compagnie avait engagé des personnes moins compétentes pour superviser les peintres, y compris M. Rampersad.

Comme tous les travaux de peinture étaient faits par le peintre principal, les autres ouvriers ne se voyaient confier que le sablage et la préparation des voitures, tâche moins bien rémunérée.

La commission d'enquête rejeta la plainte formulée contre M. Witte, le propriétaire de la compagnie, jugeant que ses intentions n'étaient pas discriminatoires; mais M. Spagnuolo, le contremaître chargé de l'embauche, avait fait preuve de discrimination envers M. Rampersad en embauchant sans aucune justification des personnes de race blanche moins qualifiées pour superviser les peintres.

La commission conclut, après la preuve, que l'opinion qu'avait des Noirs le contremaître et sa réticence à travailler avec eux, l'avaient conduit à l'exclusion du plaignant, basée sur des considérations contraires à la loi.

La compagnie et M. Spagnuolo durent verser conjointement et individuellement à M. Rampersad la somme de 1 441,36 $ pour perte de salaire, 500 $ pour souffrances morales et 364,80 $ d'intérêts.

Ce cas comporte une signification particulière en raison de la décision de la commission ordonnant que la Régie accorde à M. Karumanchiri le poste de directeur des services de laboratoire. En maintenant le jugement de la commission d'accorder au plaignant le poste qui lui avait été refusé, la Cour a déclaré que «les dispositions du code doivent être interprétées de manière large et libérale afin de remédier aux effets de la discrimination et la prévenir autant que possible».

Par ailleurs, la Cour a confirmé la constatation de la commission, à savoir que MM. Ng et Yan ont fait l'objet de représailles par suite de la plainte déposée contre la Régie des alcools de l'Ontario.

Lee v. T.J. Applebee's Food Conglomeration and Simpson

Mme Lee, qui est d'origine chinoise, était employée de cuisine dans le restaurant de l'intimé. Le personnel d'environ 120 personnes travaille dans deux endroits différents, soit dans la cuisine ou dans la salle à manger à l'avant, où les hôtes et hôtesses, serveurs et serveuses, aide-serveurs et barmen sont en contact direct avec le public. Ces postes ont plus de prestige et sont mieux rémunérés.

Mme Lee alléguait qu'elle avait, à plusieurs reprises, sollicité un travail de serveuse, mais que cela lui avait été refusé en raison de sa race et de sa couleur. Elle déclarait que les employés de cuisine de race blanche obtenaient des affectations à l'avant du restaurant, mais jamais les membres d'une minorité raciale.

L'intimé déclara qu'il trouvait que Mme Lee était très compétente dans sa tâche de boulangère et qu'elle lui était trop précieuse à ce poste pour qu'il l'affecte à un autre poste.

De nombreux témoins déclarèrent que le directeur principal et plusieurs de leurs collègues faisaient souvent entre eux, ou même adressaient aux employés appartenant à une minorité raciale des remarques désobligeantes et à connotation raciale.

Après enquête, la commission conclut que l'on n'avait pas refusé à Mme Lee une affectation pour des motifs raciaux, mais que ce restaurant était toutefois un milieu très discriminatoire. De plus, la quasi totalité des serveurs et serveuses étaient de race blanche. Le directeur général était bien au courant de ce qui se passait, mais n'avait fait aucun effort raisonnable pour que cela cesse.

La commission d'enquête jugea que la démission éventuelle de Mme Lee était due en partie à cet état de choses. De toute évidence, le restaurateur était coupable de manquement au code et il lui fut ordonné :

> -- sur les directives de la Commission, d'organiser pour ses employés un séminaire sur les dispositions du code concernant la création d'un milieu non discriminatoire, tant par le langage que par les gestes;

À l'audience, deux autres serveuses du restaurant Seasons témoignèrent qu'elles avaient été sujettes au même harcèlement. L'une d'elles déclara avoir été témoin du harcèlement de M. Aleksovski envers M^me^ Sharp, à plusieurs reprises.

Dans son témoignage devant la commission d'enquête, M. Aleksovski nia ces allégations et prétendit que M^me^ Sharp l'avait souvent conduit en voiture. Toutefois, M^me^ Sharp déclara que M^me^ Aleksovski gardait son jeune fils à son domicile et qu'elle accompagnait M. Aleksovski au travail après avoir amené son fils chez M^me^ Aleksovski.

M. Aleksovski déclara également que M^me^ Sharp avait quitté son emploi, mais y était retournée deux jours après. M^me^ Sharp soutint que bien qu'avilie et humiliée par la conduite de son employeur, elle était demeurée à son poste parce que son mari venait de fonder une nouvelle entreprise et qu'ils avaient besoin de revenus. M^me^ Sharp quitta son emploi au bout de trois mois.

La commission jugea en faveur de M^me^ Sharp, fondant en grande partie sa décision sur le témoignage des deux anciennes serveuses.

Jugeant qu'il y avait discrimination, la commission ordonna ce qui suit :

-- M. Aleksovski devrait verser à M^me^ Sharp 1 500 $ pour perte de salaire, 2 000 $ pour souffrances morales et 805 $ d'intérêts; et

-- M. Aleksovski devrait afficher dans son restaurant des résumés du code;

-- M. Aleksovski devrait notifier par écrit la Commission ontarienne des droits de la personne, durant une période de deux ans à partir de la date de la décision de la commission d'enquête, chaque fois qu'une employée quitterait le restaurant Seasons. L'avis devrait mentionner le nom de l'employée, son adresse, la période d'emploi et la raison de la cessation d'emploi.

L'appel logé par l'intimé contre ce jugement a été rejeté par la Cour.

Race, origine, handicap, état familial

The Liquor Control Board of Ontario and Parker v. Ontario Human Rights Commission, Karumanchiri, Ng et Yan

Dans une décision unanime, la Cour divisionnaire a maintenu le jugement rendu par la commission d'enquête selon lequel la Régie des alcools de l'Ontario avait fait preuve de discrimination envers Alexander Karumanchiri, Eric Ng et Joseph Yan, fondée sur la race, la couleur, l'ascendance, le pays d'origine et l'origine ethnique, dans l'attribution de deux promotions dans ses services de laboratoire. La commission jugea que les plaignants étaient plus qualifiés qu'un autre candidat promu d'abord au poste d'assistant au chimiste principal, et ensuite à celui de directeur des services de laboratoire.

avisé et d'accepter des risques minimes ou de les rejeter en faveur d'un autre emploi.

Ayant jugé qu'il y avait discrimination, la commission d'enquête ordonna ce qui suit :

> -- l'intimé devait fournir à la plaignante, aussitôt que possible, la formation additionnelle nécessaire à son emploi dans la section IPC de la raffinerie de nickel à Copper Cliff. Après avoir terminé sa formation avec succès, le premier emploi disponible à l'IPC serait attribué à la plaignante, excluant toute considération d'ancienneté et nonobstant toutes dispositions de convention collective;
>
> -- l'intimé devait mettre fin au règlement excluant les femmes en âge de procréer du secteur IPC de ses installations à la raffinerie.

Green and Swan-Sheehan v. City Auto Recyclers and Sales and Safieh

Les deux plaignantes prétendaient que M. Safieh, copropriétaire de City Auto, les avait harcelées sexuellement durant leur emploi, et avait pris des mesures de représailles contre elles parce qu'elles avaient refusé ses avances.

Plusieurs collègues témoignèrent qu'ils avaient été témoins du harcèlement. Il y eut également preuve que d'autres femmes avaient été sujettes au harcèlement. L'intimé nia ces allégations.

Les plaignantes déclarèrent que ces avances sexuelles les avait rendues malades et leur avait occasionné des troubles nerveux. L'une d'entre elles avait maigri de 26 lb en cours d'emploi et ne pesait plus que 100 lb. Elles témoignèrent que les emplois étaient rares en ville et qu'elles n'avaient pas les moyens de démissionner. Elles purent, depuis, trouver un autre emploi et démissionnèrent de City Auto.

La commission d'enquête jugea que la preuve soutenait les allégations, et que M. Safieh et la compagnie étaient responsables de cette conduite. Étant donné que M. Safieh faisait partie de la direction de la compagnie, cette dernière fut jugée personnellement responsable, en vertu de la responsabilité des sociétés.

Les deux intimés furent condamnés à verser à M^me^ Green 4 171 $, représentant 440 $ en perte de revenus, 3 000 $ pour souffrances morales et 731 $ d'intérêts. M^me^ Swan-Sheehan reçut 1 818,75 $, dont 1 500 $ pour souffrances morales et 318,75 $ d'intérêts.

Sharp v. Seasons Restaurant and Aleksovski

M^me^ Sharp faisait partie de l'équipe du soir, comme serveuse, sous la direction de M. Aleksovski. Elle prétendait qu'il avait commencé à la harceler sexuellement quelques semaines après le début de son emploi, spécialement après avoir bu de l'alcool. Elle lui demanda de cesser ses avances, mais il ne fit qu'en rire.

Ayant conclu qu'il y avait manquement au code, la commission ordonna aux intimés de verser à Mme Riggio, conjointement et individuellement, la somme de 726 $ pour perte de revenu et de 375 $ pour souffrances morales.

Wiens v. Inco Metals Co., Ontario Division

Mme Wiens avait travaillé à la raffinerie de nickel de l'Inco à Copper Cliff depuis 1974. Bien qu'elle eût, à plusieurs reprises, demandé son affectation à la section des procédés Inco de carbonyle sous pression (Section IPC), celle-ci avait été refusée en raison d'un règlement de la compagnie excluant de ce secteur toute femme en âge de procréer.

Inco avait adopté ce règlement sur la recommandation de son médecin, lequel s'était fondé sur des écrits scientifiques pour en décider. Le procédé IPC sert à extraire le nickel pur de divers matériaux contenant du nickel. Deux gaz toxiques se forment pendant le procédé : le carbonyle de nickel et le monoxyde de carbone.

Les représentants de l'intimé témoignèrent que plusieurs précautions font que les employés d'IPC ne sont pas exposés à ces gaz à des niveaux nocifs. Toutefois, ils déclarèrent que certains endroits de l'usine contenant de faibles concentrations de carbonyle de nickel sont considérés comme étant dangereux pour le foetus. Par ailleurs, ils prétendaient que le foetus conçu avec le sperme d'un homme qui avait été exposé aux gaz toxiques n'était pas touché. Le règlement s'appliquait donc uniquement aux femmes.

Inco s'inquiétait de l'effet du carbonyle sur le foetus. Si une femme travaillant à l'IPC devenait enceinte, la compagnie acceptait de l'affecter à une autre section durant toute la période de sa grossesse. Toutefois, Inco craignait que le foetus ne soit exposé au gaz carbonyle avant que l'employée constate qu'elle était enceinte.

Des experts, cités comme témoins par la commission d'enquête, réfutèrent le témoignage de l'intimé, affirmant que le règlement d'exclusion était basé sur des preuves non concluantes. Ils déclarèrent que le risque était minime et ne justifiait pas l'exigence que les femmes soient stériles ou ménopausées pour travailler à l'IPC.

La commission d'enquête conclut que le règlement d'exclusion constituait une discrimination fondée sur le sexe. La conclusion était basée sur deux faits principaux : la possibilité de devenir enceinte est la différence fondamentale entre un homme et une femme et il n'est pas nécessaire qu'il y ait discrimination contre tous les membres d'une même catégorie pour considérer qu'il y a discrimination contre la catégorie dans son ensemble.

La politique d'exclusion ne constituait pas une qualification d'emploi raisonnable et de bonne foi, aux yeux de la commission d'enquête, car elle n'avait aucun rapport avec la capacité de la plaignante d'effectuer son travail; sa sécurité personnelle et celle de ses collègues et du public en général n'étaient pas en danger et le risque pour le foetus était minime, sinon insignifiant. La commission d'enquête déclara qu'il est plus conforme aux objectifs d'égalité de permettre à l'individu de faire un choix

La commission retint que la plaignante avait droit à une compensation pour perte d'accès à l'emploi et la compagnie intimée dut verser à la plaignante 862 $ pour perte de salaire.

Blanchette v. Maninos Investments (Sault) Ltd. opérant sous le nom de Super Submarine and Donuts

M. Blanchette avait présenté une demande d'emploi comme serveur en réponse à une annonce de journal qui stipulait «serveur ou serveuse demandé(e)». Lui-même et sa cousine déclarèrent que cette dernière avait également présenté une demande et avait été convoquée pour une entrevue. Quand M. Blanchette téléphona au restaurant pour demander pourquoi il n'avait pas été convoqué, on lui répondit «ici, on n'engage que des femmes».

Sur ces preuves, la commission jugea que l'intimé avait adopté la politique de ne pas engager d'hommes à la suite d'une expérience négative avec deux employés de sexe masculin quelques années auparavant. La commission d'enquête conclut que l'intimé avait rejeté la candidature de M. Blanchette en raison de cette politique.

La commission d'enquête ayant conclu à la discrimination, l'intimé fut condamné à payer au plaignant 500 $ en dommages pour perte d'accès à l'emploi, 500 $ pour souffrances morales et 195 $ en intérêts. L'intimé dut également fournir à la Commission et au plaignant l'assurance écrite qu'il se conformerait dorénavant au code et qu'il poserait des résumés du code à un endroit bien en vue dans ses locaux.

Riggio v. Joseph's Coiffure and Vitale

M^me^ Riggio déclarait qu'elle avait perdu son emploi d'esthéticienne parce qu'elle était enceinte. Elle alléguait la discrimination en matière d'emploi fondée sur le sexe.

Dans son témoignage, M^me^ Riggio affirma que l'attitude de ses employeurs envers elle s'était refroidie dès qu'elle leur fit part de sa grossesse. Quelques semaines plus tard, elle reçut un préavis de licenciement d'une semaine.

M. Vitale, directeur du salon, affirma que le problème principal dans ce cas était que l'esthéticienne n'avait pu se former une clientèle suffisante pour que son poste soit rentable. Il déclara qu'elle ne faisait aucun effort pour promouvoir ses services et attirer de nouveaux clients.

La commission d'enquête jugea, d'après la preuve, que les inquiétudes du directeur étaient justifiées. Toutefois, les intimés n'avaient pas prévenu M^me^ Riggio qu'elle risquait de perdre son emploi avant de la renvoyer.

La commission conclut également que la grossesse de M^me^ Riggio avait été un facteur dans son licenciement, M. Vitale ayant déclaré qu'il avait su qu'elle était enceinte une semaine avant son renvoi. Il admit également que les absences éventuelles de M^me^ Riggio au cours de sa grossesse avaient été pour lui un autre facteur.

DÉCISIONS DES COMMISSIONS D'ENQUÊTE ET DES TRIBUNAUX 1987-1988

EMPLOI

Sexe, harcèlement sexuel

Anderson v. The Canadian Tire Corp. and Bianchet

Le fait de ne pas accorder d'entrevue à la candidate à cause de son sexe a été jugé comme une infraction au code.

La plaignante avait répondu à une annonce d'un centre d'emploi du Canada pour un emploi de peintre en bâtiment. Le seul critère requis était «une expérience sommaire» en peinture et la volonté d'acquérir une formation en cours d'emploi. Toutefois, elle s'est vu refuser l'entrevue avec la Division peinture et décoration Taro, bien qu'elle eût l'expérience requise et fût disposée à recevoir une formation en cours d'emploi. Persuadé qu'un tel travail n'est pas «traditionnellement» un travail de femme, l'intimé avait refusé d'interviewer M^me^ Anderson.

L'intimé prétendit que son refus de prendre en considération la candidature de M^me^ Anderson n'était pas dû à son opinion personnelle sur le travail des femmes, mais plutôt à l'hostilité des employés de sexe masculin qui en aurait résulté.

Il souligna qu'il y avait beaucoup d'hommes travaillant à ce projet, dont il ne pourrait maîtriser le comportement. Il craignait d'être tenu responsable de leur conduite, qu'il s'agisse de langage grossier en présence d'une femme ou de harcèlement éventuel.

Bien que la commission d'enquête ait jugé «louables» les inquiétudes de l'intimé quant au bien-être de la plaignante, l'attitude de ce dernier était empreinte d'un stéréotype qui veut qu'une femme est «incapable de s'intégrer et de se défendre».

L'intimé soutint qu'il n'y avait pas manquement au code, aux termes de l'alinéa 23(b) applicable dans ces circonstances. Cet alinéa stipule que le sexe peut être une qualification de bonne foi si la nature de l'emploi l'exige. Toutefois, la Commission déclara que cette clause n'est applicable que si certaines caractéristiques de l'emploi ont un rapport avec l'inaptitude de l'individu à effectuer ce genre de travail. Ce n'était pas le cas d'après les faits soumis à la commission d'enquête.

Reconnaissant que la position de l'intimé était difficile, la commission d'enquête déclara toutefois qu'un employeur devait prendre des mesures pour éviter toute discrimination en milieu de travail et ne devait pas, lui-même, faire preuve de discrimination afin d'éviter un problème éventuel. La commission déclara que «l'inconduite ou la crainte d'inconduite d'autres employés envers un employé ou un candidat ne peut justifier la discrimination envers cette personne».

son état de santé ne l'empêcherait pas de se conformer aux dispositions du contrat d'assurance. Mais son offre avait été refusée. En conciliation, l'intimé accepta de renoncer à sa politique, de réviser son formulaire de demande et d'étudier à nouveau la demande du plaignant. La demande fut acceptée et le cas ainsi réglé.

Race, couleur et ascendance

Le plaignant, un étudiant canadien autochtone, alléguait que l'un de ses professeurs faisait souvent, durant ses cours, des remarques désobligeantes au sujet des autochtones. Il alléguait la discrimination en matière de services et d'installations, fondée sur la race, la couleur et l'ascendance.

Le témoignage d'étudiants qui avaient pu observer le comportement du professeur permit lors de l'enquête de confirmer ces allégations. Le supérieur du professeur ordonna à celui-ci de faire des excuses au plaignant, devant toute la classe, en début de cours. La direction de l'établissement avertit le professeur que sa conduite était inacceptable et constituait un manquement au code. La plainte fut ainsi réglée à la satisfaction du plaignant.

L'affaire fut traitée selon la procédure de priorité des cas. La Commission informa le propriétaire que sa politique était fondée sur la présomption que les locataires non mariés étaient moins stables que les couples mariés. Le propriétaire fut informé des dispositions du code sur l'état matrimonial. Il accepta de modifier sa politique et d'évaluer la solvabilité des locataires en calculant les deux salaires combinés, que les couples soient mariés ou non. La demande du couple fut acceptée et les deux parties furent satisfaites de l'issue de cette affaire.

État familial

Un couple avec un enfant alléguait qu'on leur avait refusé un appartement à cause de leur état familial, défini dans le code sous la relation parent-enfant.

L'affaire fut résolue selon la procédure de priorité des cas. L'intimé confirma que cette candidature n'avait pas été prise en considération en raison d'une politique exigeant que les appartements soient «réservés aux adultes».

Le propriétaire accepta d'abandonner la politique en question et avertit ses gérants d'immeuble qu'aucun candidat ne pouvait être refusé parce qu'il avait des enfants. La demande du couple fut acceptée et il put louer le premier appartement vacant.

État d'assisté social

La plaignante, qui recevait des prestations de la Commission des accidents du travail, affirmait qu'on avait refusé de lui louer un appartement parce qu'elle était sans emploi. Elle alléguait la discrimination en matière de logement fondée sur son état d'assistée sociale.

Au cours de la conférence d'appréciation des faits, le propriétaire admit qu'il préférait louer à des personnes qui avaient un emploi. La preuve révéla, documents à l'appui, que la plaignante avait les moyens de payer le loyer.

En conciliation, le propriétaire versa à la cliente une indemnité de 460 $ représentant ses débours et accepta d'évaluer la capacité de payer un loyer en tenant compte de tous les revenus, quels qu'ils soient. La plainte fut ainsi réglée à la satisfaction de la plaignante.

BIENS, SERVICES ET INSTALLATIONS

Handicap

Le plaignant, un homme atteint d'arthrite, alléguait que sa demande d'assurance-hypothèque lui avait été refusée à cause de son état physique. Le formulaire de demande contenait des questions sur les antécédents médicaux. Il alléguait la discrimination en matière de services fondée sur un handicap.

Au cours de la conférence d'appréciation des faits, le plaignant déclara qu'il avait offert de fournir un certificat de son médecin indiquant que

négatifs sur son homosexualité. Il affirmait que ces attitudes négatives créaient un climat dans lequel il ne pouvait être traité équitablement par son directeur et les autres employés de l'intimé. La preuve tendait à confirmer les allégations.

Lors du règlement, l'intimé consentit à payer au plaignant 200 $ de dommages pour atteinte à sa dignité. Le plaignant ne demanda pas d'indemnité pour perte de salaire parce qu'il avait trouvé un autre emploi immédiatement. L'intimé congédia le directeur qui s'était rendu coupable de discrimination.

LOGEMENT

Race et couleur

Une femme de race blanche alléguait qu'elle avait acheté une roulotte placée dans un parc de roulottes. Elle s'était entendue avec le directeur pour retourner plus tard brancher la roulotte aux installations. Elle revint au parc avec sa fille et son beau-fils, un Noir, et s'approcha du bureau. La femme du directeur leur demanda de revenir à la fin de la journée quand son mari serait là. Plus tard, le directeur avertit la plaignante que le propriétaire précédent de la roulotte n'avait pas le droit de la vendre sur place et que cette place avait été promise à quelqu'un d'autre. Soupçonnant qu'il ne disait pas la vérité, la plaignante demanda si cela avait quelque chose à voir avec la race et la couleur de son beau-fils. Le directeur acquiesça et fit valoir que les résidents du parc n'apprécieraient pas qu'une parcelle de terrain soit louée à un Noir. La plaignante alléguait la discrimination en matière de logement fondée sur la race et sur ses liens avec un groupe protégé par le code.

Le directeur répondit à la plainte en disant que ce qui lui avait déplu dans la vente était le fait qu'il n'avait pas pu choisir les acheteurs éventuels.

La Commission questionna l'homme qui avait vendu la roulotte à la plaignante. Il déclara que le directeur avait avoué ne pas aimer les Noirs, et avait approuvé la vente pensant que les acheteurs et leurs familles étaient de race blanche.

Après la conférence d'appréciation des faits, les parties s'entendirent pour régler la plainte moyennant la remise d'une indemnité de 1 395 $ à la plaignante, représentant les dommages pour souffrances morales et pour compenser les débours effectués en raison de cet acte de discrimination.

État matrimonial

Un couple non marié alléguait qu'un appartement lui avait été refusé parce que le propriétaire appliquait la politique du «salaire minimum» exigé pour chaque membre du couple. Il affirmait que pour les couples mariés, le propriétaire évaluait le «salaire minimum» sur la base des deux salaires combinés. Il alléguait la discrimination en matière de logement fondée sur l'état matrimonial.

Après un examen préliminaire de l'affaire, la Commission décida de ne pas donner suite à la plainte pour les raisons suivantes :

-- la discrimination alléguée avait déjà fait l'objet d'une audience d'arbitrage. Au cours de cette audience, absolument toutes les allégations d'atteinte aux droits de la personne avaient été abordées;

-- la plupart des événements cités avaient eu lieu quatre ans auparavant. L'intimé aurait subi un préjudice grave si la plainte avait été déposée, étant donné que de nombreux témoins et documents n'étaient plus disponibles;

-- les résultats des recherches de l'arbitre, compte tenu de la crédibilité de la plaignante, confirmaient le point de vue de l'intimé que la plainte avait été présentée de mauvaise foi.

Croyance

La plaignante, une Juive, alléguait que son employeur avait refusé sa demande de lui accorder deux jours de congé sans solde pour les fêtes religieuses de Rosh Hoshanah et Yom Kippour. Sa plainte alléguait la discrimination en matière d'emploi fondée sur la croyance.

Au cours de la conférence d'appréciation des faits, l'intimé déclara que son refus était fondé sur une politique stipulant que les congés sans solde ne pouvaient être accordés avant que tous les jours de vacances ne soient épuisés. La Commission informa les représentants de la compagnie de leur obligation de faire des efforts raisonnables pour faciliter à leurs employés l'observance de leurs devoirs religieux, à moins de difficultés indues.

La plainte fut réglée de la façon suivante :

-- l'intimé rajouta les deux jours en question à la période de vacances de l'employé, en lui accordant les deux journées de congé sans solde;

-- l'employeur modifia sa politique afin qu'elle soit conforme aux dispositions du code.

Orientation sexuelle

Le plaignant, un homosexuel, alléguait qu'il avait été renvoyé de son poste de serveur à cause de problèmes de rendement qui n'étaient cependant pas reprochés aux hétérosexuels. Sa plainte alléguait la discrimination en matière d'emploi fondée sur l'orientation sexuelle.

Lors de la conférence d'appréciation des faits, le plaignant déclara que son directeur et plusieurs de ses collègues avaient fait des commentaires

L'enquête révéla que le travail de la plaignante était excellent tant au cours de l'exercice que par le passé. D'autres employés dont le rendement était le même avaient reçu une augmentation.

Les parties acceptèrent de régler la plainte en versant à la plaignante la somme de 750 $, représentant le montant de son augmentation au mérite.

Harcèlement sexuel

La plaignante alléguait qu'elle avait été victime de harcèlement sexuel physique et verbal de la part d'un de ses collègues. Elle déclara avoir informé du problème plusieurs de ses supérieurs mais qu'aucune mesure n'avait été prise. Elle dut donner sa démission pour mettre fin au harcèlement. La compagnie intimée déclara qu'elle avait été informée trop tard du problème pour prendre les mesures correctives nécessaires.

Durant l'enquête, la Commission interviewa plusieurs superviseurs et collègues de la plaignante qui confirmèrent que cette dernière les avait informés des incidents. Deux collègues avaient été témoins de la conduite insultante de l'intimé envers la plaignante. L'un des témoins déclara avoir rapporté l'incident à un cadre supérieur plusieurs semaines avant le départ de la plaignante. La preuve confirmait les allégations de cette dernière.

En conciliation, les parties en arrivèrent au règlement suivant :

-- la plaignante reçut 2 750 $ d'indemnité pour atteinte à sa dignité. Comme elle avait trouvé un autre emploi, elle ne réclamait pas d'indemnité pour salaire perdu;

-- les intimés (la compagnie et le collègue) écrivirent une lettre d'excuses à la plaignante et fournirent à la Commission l'assurance écrite de leur politique contre le harcèlement sexuel;

-- la compagnie établit des directives écrites sur le harcèlement au travail et sur les moyens de résoudre les plaintes des employés.

Sexe

Une employée d'hôtel alléguait qu'on lui avait refusé une promotion à divers postes de supervision sur une période de plusieurs années, à cause de son sexe. Elle déclarait qu'on lui avait préféré des hommes dont les compétences étaient inférieures aux siennes.

Cependant, l'intimé avait demandé à la Commission de ne pas fonder la plainte sur l'article 33 du code. Cet article stipule que la Commission peut refuser de s'occuper de la plainte si celle-ci ne relève pas de sa compétence, si la plainte est insignifiante, superficielle, vexatoire ou de mauvaise foi; si les faits sur lesquels se fonde la plainte ont eu lieu plus de six mois avant que la plainte ne soit déposée; ou s'il existe une procédure aux termes d'une autre loi qui est plus appropriée en cette circonstance.

Sexe

La plaignante alléguait que l'intimé lui avait refusé le poste de représentante de commerce en raison de son sexe. Elle déclarait que la compagnie avait pour politique de recruter les représentants de commerce à l'intérieur de la compagnie, parmi les chauffeurs et les préposés à l'expédition, qui sont des postes de niveau d'entrée dans la compagnie, traditionnellement réservés aux hommes.

Au cours de l'enquête, la Commission confirma que les postes de chauffeur et de préposé à l'expédition servaient d'apprentissage aux employés qui désiraient accéder à des postes supérieurs, y compris la vente. La force physique exigée pour les postes de chauffeur ou de préposé à l'expédition est un facteur essentiel et sert de moyen systémique pour empêcher les femmes d'accéder à des postes plus lucratifs. La Commission examina les qualifications et l'expérience de la plaignante et constata qu'elles étaient plus qu'acceptables pour un poste dans la vente. La preuve confirmait les allégations de la plaignante.

En conciliation, les termes de l'entente suivante furent négociés :

-- la plaignante présenta une demande de poste dans la vente. Elle fut acceptée et, après sa période de probation, obtint son statut d'employé permanent;

-- l'intimé annula la condition voulant que les candidats à un poste dans la vente soient choisis parmi les chauffeurs et préposés à l'expédition.

Sexe (grossesse)

La plaignante travaillait depuis un mois pour la compagnie, à la formation en informatique, quand elle devint enceinte. Elle allégua que, lorsqu'elle le dit à son employeur, celui-ci mit fin à ses services en prétendant que la compagnie n'avait pas intérêt à la former alors que dans sept mois elle partirait en congé de maternité. Il ajouta que même si la plaignante avait l'intention de retourner au travail à la fin de son congé de maternité, elle allait avoir des problèmes à trouver une gardienne ou une garderie. Elle déposa une plainte pour discrimination en matière d'emploi fondée sur le sexe qui, aux termes du code, comprend aussi la grossesse.

À la suite de la conférence d'appréciation des faits, les parties en sont venues à une entente. La plaignante a reçu 2 500 $ en compensation pour souffrances morales et l'employeur informa tout le personnel sur sa politique non discriminatoire.

Sexe (grossesse)

La plaignante alléguait qu'on lui avait refusé une augmentation au mérite parce qu'elle était devenue enceinte et qu'elle prendrait son congé de maternité au cours de l'exercice. Elle alléguait la discrimination en matière d'emploi fondée sur le sexe.

Origine ethnique

Un homme, d'origine égyptienne, avait fait une demande d'emploi comme technicien principal de laboratoire dans une clinique. Il alléguait qu'il avait été interviewé et refusé sans qu'il lui soit donné une explication satisfaisante sur la raison pour laquelle ses compétences étaient jugées insuffisantes. Il estimait que certaines des questions de l'entrevue concernant les rapports avec autrui et la capacité de travail sous pression étaient indirectement discriminatoires à l'égard des immigrants. Il déposa donc une plainte pour discrimination en matière d'emploi fondée sur le lieu d'origine et l'origine ethnique.

L'enquête ne révéla aucune preuve à l'appui de ses allégations. La Commission examina les résultats de l'enquête et rejeta la plainte en donnant aux parties les explications qui suivent.

La preuve indiquait que :

-- le plaignant avait été soumis au procédé normal de sélection des candidats. Un directeur du personnel l'avait interviewé en se fondant sur les qualifications indiquées dans sa demande. On ne lui avait pas accordé une deuxième entrevue parce que le directeur du personnel avait jugé qu'il n'avait pas répondu à certaines questions portant sur son expérience et sa formation, dans le contexte du poste offert;

-- l'intimé offrait cependant au plaignant de rencontrer le directeur responsable de l'embauchage au sujet d'un autre poste qui devait être vacant. Le directeur posa au plaignant une question élémentaire sur ses connaissances dans le domaine de la formation en laboratoire, question qui était posée à tous les candidats, mais à laquelle il n'avait pu répondre. De plus, le médecin responsable du laboratoire jugea que le plaignant n'avait pas répondu aux questions ayant trait à la qualité de son travail et à sa formation, ce qui laissait planer des doutes sur sa compétence;

-- l'intimé informa le plaignant que sa formation en cours d'emploi durerait deux ans et qu'il fallait vérifier ses références si on lui offrait cet emploi -- cet avis avait été adressé à tous les candidats;

-- l'étude des entrevues avec les candidats qui avaient obtenu des postes révéla que l'un d'eux était Égyptien comme le plaignant -- les origines des candidats retenus et celles du personnel du laboratoire étaient fort diverses.

de la poussière. La Commission examina les conclusions de l'enquête, décida de rejeter la plainte et donna aux parties les raisons écrites suivantes :

> Les résultats de l'enquête n'ont pas confirmé les allégations de discrimination fondée sur un handicap. La preuve indiquait que le plaignant n'avait pas continué à effectuer les tâches essentielles pour lesquelles il avait été embauché, en raison de son allergie à la poussière, et qu'il n'existait dans l'usine aucun autre emploi répondant aux qualifications de l'employé et qui fut en même temps à l'abri de la poussière.

Le plaignant demanda alors de reconsidérer la décision conformément à l'article 36 du code, et maintint qu'il aurait dû être muté à un autre endroit. Après révision, la Commission décida de reconfirmer sa première décision et notifia à nouveau les parties :

-- concernant l'atelier de machinerie, le plaignant n'était pas mécanicien spécialisé et n'avait pas assez d'ancienneté pour être placé dans ce service, ce que confirma le représentant du syndicat. D'autre part, il n'y avait pas moins de poussière à cet endroit que dans ceux où le plaignant avait souffert d'allergie;

-- il en était de même pour le service de l'expédition;

-- quant au poste de commis à l'entrepôt, bien que le plaignant eût neuf jours d'ancienneté de plus que le candidat choisi, ce dernier avait plus d'instruction et d'expérience. D'autre part, il y avait autant de poussière dans ce service que dans les autres;

-- la preuve révélait que l'intimé avait essayé d'accéder aux désirs du plaignant en lui cherchant un autre poste, mais que la compétence et l'ancienneté du plaignant ne s'y prêtaient pas;

-- la compagnie avait répondu aux besoins d'autres employés qui avaient des troubles de santé, quand les postes avaient été disponibles et que cela était possible;

-- au moment où le plaignant avait été engagé, l'intimé était au courant de ses allergies et l'avait embauché quand même.

La Commission obtint les preuves médicales indiquant que le plaignant aurait pu accomplir les fonctions de son emploi sans aucun risque pour lui-même ni pour les autres, et sans que l'employeur ait à modifier lesdites fonctions. La preuve soutenait les allégations.

En conciliation, les parties arrivèrent au règlement suivant :

-- le plaignant reçut 1 679 $ d'indemnité pour perte de salaire;

-- l'employeur révisa sa politique d'embauche en matière d'examen médical afin de se conformer aux exigences du code.

Handicap

La plaignante, qui avait travaillé 14 ans pour la compagnie intimée, alléguait qu'elle avait été renvoyée une semaine après avoir informé son superviseur qu'elle devait s'absenter de six à huit semaines pour subir une intervention chirurgicale. Elle alléguait la discrimination en matière d'emploi fondée sur un handicap.

Lors de la conférence d'appréciation des faits, l'employeur admit qu'il n'avait jamais eu à se plaindre du travail ni de l'assiduité de la plaignante au cours de ses 14 années de service. La preuve confirmait la plainte.

En conciliation, les parties négocièrent l'entente suivante :

-- la plaignante, qui ne demandait pas à reprendre son travail, reçut 1 400 $ d'indemnité pour perte de salaire et 600 $ pour atteinte à sa dignité;

-- l'employeur révisa son formulaire de demande et sa politique médicale afin de se conformer aux exigences du code;

-- la Commission reçut l'assurance écrite que la compagnie appliquerait une politique non discriminatoire et afficherait des résumés du code dans tous ses établissements en Ontario.

Handicap

Le plaignant, ouvrier sanitaire travaillant dans une usine, avait demandé un transfert en raison de son allergie à la poussière. Il alléguait que sa demande avait été refusée et qu'il avait été renvoyé à cause de son allergie. Il déclarait également qu'il avait demandé, sans succès, une promotion. Il déposait une plainte pour discrimination fondée sur un handicap.

L'enquête révéla que l'employeur avait essayé de répondre aux besoins du plaignant, mais que ce dernier ne possédait pas les qualifications nécessaires pour occuper un poste dans les bureaux ou les entrepôts, à l'abri

En conciliation, les parties acceptèrent le règlement suivant :

-- la plaignante reçut 4 784 $ d'indemnité pour perte de salaire due à la discrimination. Le montant était basé sur le salaire qu'elle aurait dû gagner de la date de son congédiement à la date du nouvel emploi obtenu;

-- le superviseur et le directeur écrivirent une lettre d'excuses à la plaignante et l'assurèrent de leur politique non discriminatoire;

-- l'hôpital, en collaboration avec la Commission, mit sur pied une politique interdisant la discrimination raciale ou le harcèlement à ce sujet sur les lieux de travail.

Harcèlement en raison de la race et de l'origine

La plaignante, commis de bureau originaire de l'Inde, alléguait que son superviseur avait placé sur son bureau une note contenant des remarques raciales insultantes. Elle fut si humiliée qu'elle donna sa démission. Sa plainte était fondée sur le harcèlement au travail à cause de sa race, sa couleur et son origine.

Au cours de la conférence d'appréciation des faits, le superviseur admit que les allégations étaient vraies. Les parties en arrivèrent au règlement suivant :

-- la plaignante reçut 2 500 $ d'indemnité pour atteinte à sa dignité et 636 $ pour perte de salaire;

-- elle reçut une lettre d'excuses ainsi qu'une bonne lettre de recommandation;

-- la Commission reçut l'assurance écrite que la compagnie appliquerait une politique non discriminatoire, et une note de service à cet effet fut envoyée à tout le personnel;

-- la Commission organisa un séminaire sur le harcèlement et la discrimination à cause de la race ou de l'origine, auquel assistèrent tous les employés de la compagnie.

Handicap

Le plaignant, un homme qui souffrait des poumons, alléguait qu'un emploi dans une manufacture lui avait été refusé en dépit de l'affirmation d'un spécialiste des maladies pulmonaires que ses troubles ne l'empêchaient pas d'accomplir convenablement son travail. Sa plainte était fondée sur la discrimination en matière d'emploi fondée sur un handicap.

EXEMPLES DE PLAINTES DE DISCRIMINATION DÉPOSÉES EN 1987-1988

EMPLOI

Race, couleur et origine ethnique

Le plaignant, un Noir originaire de la Trinité, alléguait qu'il s'était vainement, et à plusieurs reprises, porté candidat à des postes qui avaient toujours été obtenus par des personnes de race blanche ayant moins de compétences que lui. L'enquête révéla qu'il avait plus de connaissances et d'expérience pour ces postes de supervision que les candidats de race blanche qui avaient été choisis. Comme il s'agissait de postes non syndiqués, l'employeur, un important manufacturier, avait résolu de ne pas les afficher. La preuve confirma la plainte.

En conciliation, les parties acceptèrent le règlement suivant :

-- le plaignant fut promu au poste de supervision suivant, pour lequel il était qualifié, avec une augmentation de 5 372 $ sur son salaire précédent;

-- l'employeur modifia sa politique d'embauche pour s'assurer que tous les postes vacants seraient désormais affichés;

-- l'employeur fournit à la Commission et au plaignant l'assurance écrite d'une politique non discriminatoire et afficha dans ses locaux des résumés du code.

Race, couleur

La plaignante, une Noire, alléguait qu'elle avait été renvoyée de son poste de technicienne de laboratoire à cause de sa race et de sa couleur. Elle déclarait qu'au cours de ses trois années à ce poste, elle n'avait reçu aucune plainte au sujet de son travail jusqu'au moment où un nouveau superviseur a été embauché. La plaignante alléguait que ce dernier critiquait certains aspects de son travail qui étaient pourtant conformes aux politiques de l'employeur.

Au cours de l'enquête, la Commission interrogea l'ancien superviseur de la plaignante, ses directeurs et ses collègues. Tous confirmèrent que le travail de la plaignante était conforme aux normes établies et était égal, sinon supérieur, à celui des autres techniciens de laboratoire. D'autres employés, qui n'étaient pas de race blanche, croyaient que le nouveau superviseur avait des préjugés à l'égard des Noirs. Les preuves confirmaient les allégations.

lièrement pour les questions touchant les services et l'embauche. On peut obtenir des renseignements complémentaires sur ces politiques auprès de l'Unité pour les personnes handicapées.

et des organismes de défense des droits. Parmi les organismes qui ont eu recours aux services de l'Unité figurent le Bureau d'égalité d'accès à l'emploi de Toronto, la Société canadienne de l'hémophilie, la Coalition sur l'équité salariale pour les handicapés, le Syndicat des employés de la fonction publique de l'Ontario, les Services communautaires du Toronto métropolitain, les Durham Region Social Services, le York Finch General Hospital, la Ville de Hamilton, le Comité indépendant pour les handicapés, la Ville de Scarborough, l'Ontario Hospital Association, Northern Telecom, la Ville d'Oshawa et la compagnie Hay Management Consultants Ltd.

Il s'est tenu des discussions inter et intragouvernementales avec les commissions des droits de la personne et les autres ministères provinciaux, organismes, et ministères fédéraux. Le ministère de la Consommation et du Commerce de l'Ontario, la Commission des droits de la personne de la Saskatchewan, celle du Nouveau-Brunswick, de l'Alberta, le ministère des Transports et des Communications de l'Ontario, et la Commission canadienne des droits de la personne. Tous ces organismes gouvernementaux ont bénéficié de nos services de consultation.

Formation et perfectionnement du personnel

L'Unité organise des séances de formation et de consultation sur les nouvelles politiques, les questions d'actualité et les méthodes à utiliser pour résoudre les problèmes de discrimination fondée sur un handicap.

À l'occasion de la Journée internationale des droits de la personne, le 10 décembre, et dans le cadre de programmes de prise de contact communautaire, des membres du personnel de la Commission ont rencontré des groupes communautaires dans toute la province pour discuter des droits des personnes handicapées. Chaque groupe fit un exposé sur ses activités, son rôle et ses rapports avec les personnes handicapées, les cas de discrimination et leurs rapports avec la Commission. Ces discussions aideront à offrir un meilleur service aux personnes handicapées.

L'Unité pour les personnes handicapées a organisé un séminaire de formation sur le SIDA afin d'établir une ligne de conduite appropriée dans les cas de plaintes de manquement au code touchant le SIDA. Un grand nombre de sujets reliés à cette maladie furent traités au cours du séminaire : épidémiologie, transmission du virus, tests, questions d'assurance, hémophilie, homosexualité et les incidences juridiques aux termes du code.

Travaux de recherche et élaboration des politiques et programmes

Ayant établi en 1985-1986 une politique sur les examens médicaux d'embauche, la Commission a examiné au cours de l'exercice 1987-1988 les dossiers d'examen de dépistage de drogues et d'alcool, conformément à la politique établie. La politique de la Commission en matière de dépistage de drogues et d'alcool avait été établie en octobre 1987. Une brochure expliquant ces politiques est maintenant offerte au grand public.

Des recherches sont effectuées en vue d'établir une ligne de conduite concernant la discrimination envers les personnes atteintes de SIDA, particu-

ascenseur et pour assister aux cours qui se donnaient au deuxième étage, il était donc obligé de quitter la classe dix à quinze minutes avant les autres. Il allégua que ses droits à un traitement égal en matière de services avaient été enfreints.

L'intimé déclara qu'il avait fait son possible pour répondre aux besoins de M. Côté, mais avait conclu que l'installation d'un ascenseur pour un seul élève handicapé n'était pas justifiée. La preuve indiquait que l'intimé avait adopté une politique qui n'était pas intentionnellement discriminatoire, mais qui était quand même discriminatoire pour les personnes ayant un handicap moteur.

Une entente satisfaisant les deux parties fut conclue avant l'audience. La prochaine fois qu'un élève aura besoin d'un ascenseur, le conseil scolaire fera une demande de fonds à cet effet au ministère de l'Éducation.

D'autres cas résolus par des commissions d'enquête au cours de l'exercice portaient sur les sujets suivants :

-- cessation d'emploi alors que le plaignant recevait des prestations de la Commission des accidents du travail;

-- discrimination d'un employeur contestant la capacité du plaignant atteint de diabète de conduire un véhicule motorisé;

-- discrimination d'un employeur contestant la capacité d'une personne atteinte de paralysie cérébrale d'effectuer les tâches de commis d'épicerie;

-- examens médicaux d'embauche éliminant une personne ayant des troubles de l'ouïe et une autre ayant une blessure à un genou. Toutes deux étaient capables d'effectuer l'essentiel de leurs tâches en toute sécurité.

Éducation du public

L'Unité a continué de jouer un rôle d'éducation du public en l'informant des droits des personnes handicapées, aux termes du Code des droits de la personne. Les membres du personnel ont assisté à des ateliers, séminaires, débats et autres événements spéciaux avec divers groupes : le Programme d'emploi pour les personnes handicapées, la Commission des accidents du travail, la Faculté de droit de l'Université Queen's, l'Ontario Nursing Home Association, le Tri-Hospital Diabetes Education Centre, le Ontario Rehabilitation Workshop Council, le Center for Independent Living in Toronto, l'Office des chances égales de la ville d'Ottawa, l'Université York, le Kingston General Hospital, la Bellwoods Park House, le Conseil des écoles catholiques du grand Toronto, la Personnel Association of Toronto, l'Association canadienne de justice pénale et le Collège Algonquin d'art appliqué et de technologie.

En plus d'assurer l'éducation du public, le personnel de l'Unité a tenu dans toute la province des consultations avec le monde des affaires et de l'industrie, des syndicats, des associations professionnelles, des associations de soins professionnels de la santé, des groupes de consommateurs

Dans son rôle de conseiller, le personnel de l'Unité a aidé les employeurs à mieux comprendre les politiques de la Commission en matière de tests pour le dépistage d'alcool et de drogue ou du SIDA sur les lieux de travail, et à s'y conformer.

Au cours de l'exercice, de nombreux cas réglés par la commission d'enquête se fondaient sur des décisions précédentes. Voici quelques-unes de ces décisions.

Dans l'affaire Hickling, Horbay, Legris v. the Lanark Leeds and Grenville County Roman Catholic Separate School Board, la commission d'enquête constata qu'on avait refusé à trois élèves «déficients mentaux moyens» une éducation catholique complète en raison de leur handicap, et que le Conseil des écoles catholiques n'avait pas fait tous les efforts raisonnables pour accepter les trois enfants.

L'intimé porta cette décision devant la Cour divisionnaire qui accepta l'appel et rejeta l'ordonnance de la commission d'enquête. La commission porta l'affaire devant la Cour d'appel.

Dans l'affaire Choudhery v. the Ford Motor Co. of Canada Ltd., M. Choudhery, qui ne voit pas d'un oeil, postula un emploi dans cette compagnie. Il fut interviewé et inscrit à l'examen médical d'embauche. Il ne fut pas embauché avant le 27 août 1984 et allégua que ce délai avait essentiellement été causé par son handicap.

L'intimé allégua que la compagnie avait fondé sa décision sur une politique d'embauche aux termes de laquelle le plaignant était placé dans la catégorie la moins privilégiée pour des raisons non reliées à son handicap.

Les efforts de conciliation ayant échoué, une commission d'enquête fut constituée parce que l'on avait la preuve que d'autres personnes qui avaient présenté une demande d'emploi bien après le plaignant, et qui tombaient dans la même catégorie que lui, avaient été embauchées avant lui.

Les parties arrivèrent à un accord et la compagnie versa 10 000 $ en dommages généraux sans préjudice à l'intimé.

Dans l'affaire Hajla v. Welland Plaza and Nestoras, une personne atteinte d'épilepsie non contrôlée, allégua qu'on avait refusé de la servir à cause de ses crises d'épilepsie. On lui offrait uniquement des plats «à emporter».

La commission d'enquête soutint que le propriétaire du restaurant avait fait preuve de discrimination envers M^me^ Hajla en raison de son handicap, et ordonna à l'intimé d'offrir à la plaignante les mêmes services et le même traitement qu'aux autres clients.

L'affaire Sylvain Côté v. l'École secondaire l'Essor in Essex County a été réglée à l'amiable et donc avant que la commission d'enquête ne se réunisse. M. Côté fréquenta l'école jusqu'à la remise de son diplôme en juin 1987. Il se déplace en fauteuil roulant. Son école n'est pas munie d'un

DISCRIMINATION FONDÉE SUR UN HANDICAP

L'exercice 1987-1988 marque la cinquième année de l'application des dispositions du code relatives à un handicap. Aux termes des amendements qui seront bientôt apportés au code, le fait de refuser à une personne handicapée, emploi, biens, services, utilisation d'installations ou logement en raison de l'absence d'accès aux lieux ou par manque d'aménagements nécessaires, constituera un manquement au code. Il sera nécessaire d'offrir ces accès ou aménagements, à moins que ceux-ci n'occasionnent des difficultés indues en raison du coût, du financement, ou pour des raisons de santé et de sécurité.

Bien que la plupart des plaintes fondées sur un handicap physique ou mental soient désormais traitées au palier régional, l'Unité pour les personnes handicapées continue de jouer un rôle de spécialiste et de conseiller. L'Unité s'occupe des plaintes de nature systémique et complexe, et des questions relatives à la discrimination fondée sur un handicap.

L'Unité recommande des programmes et des politiques dans divers domaines : les examens médicaux d'embauche, les tests de dépistage de drogues, le SIDA en tant que maladie, l'absentéisme dû à la maladie, la dignité du risque et les assurances.

L'an dernier, un nombre sans précédent de commissions d'enquête ont été constituées pour traiter des plaintes fondées sur un handicap. Toutefois, la plupart des cas ont été réglés avant audience.

Les statistiques concernant le nombre total de plaintes reçues indiquent que le volume de plaintes de discrimination fondée sur un handicap continue de dépasser toutes les autres plaintes, et représentent 41 p. 100 de toutes les plaintes déposées durant l'exercice 1987-1988.

ACTIVITÉS DE 1987-1988

Plaintes de discrimination

Durant la période allant du 1er avril 1987 au 31 mars 1988, la Commission a reçu 730 plaintes officielles. Au cours de cette période, 663 furent réglées par voie de procédures, 452 furent réglées à l'amiable, 98 furent rejetées par la Commission, soit par manque de compétence, soit par manque de preuves pour étayer la plainte. Quatorze furent refusées aux termes de l'article 33 du code et 99 furent retirées par les plaignants.

Parmi les plaintes déposées, 89 p. 100 étaient fondées sur un handicap physique, 7,7 p. 100 sur un handicap mental et 3,3 p. 100 fondées sur la Loi sur les accidents du travail.

La Commission a eu à étudier des questions traitant d'acuité visuelle, de diabète et d'épilepsie dans le contexte des normes physiques exigées des agents de police et des sapeurs-pompiers; des droits en matière d'emploi et d'éducation des personnes mentalement handicapées; et de la validité des épreuves de force physique dans la sélection des employés.

Dans l'affaire Robichaud v. Treasury Board, la Cour suprême insiste sur le fait que la raison d'être des mesures législatives portant sur les droits de la personne est d'abolir la discrimination plutôt que de punir un comportement antisocial. Les motifs ou les intentions de ceux qui font de la discrimination ne sont pas pertinents, les mesures législatives portant sur les droits de la personne traitant des effets de la discrimination plutôt que de ses causes ou de ses motivations.

femmes à travailler à des postes de «cols bleus» et même les en empêchaient. Dans son ordonnance, le tribunal exigea que le CN fixe un objectif de 13 p. 100 de participation des femmes aux postes de «cols bleus», et embauche une femme pour trois hommes, jusqu'à ce que cet objectif soit atteint. La Cour suprême maintint la décision du tribunal. La Cour retint que dans les programmes d'égalité d'accès à l'emploi, on ne peut dissocier remède et prévention, car il n'existe pas de prévention sans quelque forme de remède. Elle a de plus déclaré qu'en essayant de combattre la discrimination systémique, il faut essayer de se débarrasser des anciennes formes de discrimination afin de ne pas retomber dans les mêmes erreurs.

Dans cette affaire, la décision de la Cour suprême est importante parce qu'elle autorise l'application de mesures de redressement en cas de discrimination systémique. L'article 40 du code, qui représente les mesures de redressement, permet à la commission d'enquête d'ordonner à une partie «...de prendre toutes mesures que, de l'avis de la commission, devrait prendre la partie en vue de se conformer aux termes de la loi, tant au sujet de la plainte en cours que dans ses actions futures...». Les termes de l'article 40 du code, ainsi que la décision de la Cour suprême dans l'affaire Action travail des femmes v. Canadian National Railway, ne laisse aucun doute que la Commission se doit de combattre fermement toute forme de discrimination systémique qu'elle pourrait découvrir.

Dans l'affaire Robichaud v. Treasury Board, la Cour suprême aborde la question de la responsabilité des sociétés dans les cas de violation des droits de la personne. Dans cette affaire, un tribunal fédéral jugea que Bonnie Robichaud avait été harcelée sexuellement par son superviseur. La seule question sur laquelle devait se prononcer la Cour suprême était de savoir si l'employeur, le ministère de la Défense nationale, pouvait être tenu responsable des agissements du superviseur.

Déclarant que seul l'employeur peut remédier à une situation indésirable et offrir un milieu de travail sain, la Cour suprême tint le ministère de la Défense nationale responsable du harcèlement sexuel exercé par le superviseur de Bonnie Robichaud. La Cour jugea qu'il s'agissait d'une responsabilité légale par nature, plaçant «...la responsabilité d'une organisation entre les mains de ceux qui la dirigent et qui peuvent prendre des mesures efficaces pour remédier à une situation indésirable...».

Aux termes du code de l'Ontario, un employeur peut être tenu responsable de harcèlement sexuel, conformément au paragraphe 40(4), si l'employeur était au courant ou était en possession de faits lui permettant d'avoir connaissance du harcèlement sexuel et n'avait pas pris «... les moyens raisonnables disponibles...» pour punir la personne en cause ou éviter une telle conduite.

Un employeur peut également être tenu responsable de harcèlement sexuel conformément à la théorie de la responsabilité des sociétés. Cette théorie avance que lorsqu'un employé fait partie de la direction de l'entreprise, la société est personnellement responsable des agissements de cet employé. En d'autres termes, les agissements de cet employé deviennent les agissements propres de la société.

Le tribunal a cité deux objectifs que vise l'alinéa 9(a) du code. Le premier c'est d'arriver à un compromis entre le droit absolu au travail et celui de travailler jusqu'à une date établie coïncidant avec les droits à la retraite. Le deuxième objectif est de permettre le renouvellement des effectifs de travail par l'embauchage de personnes plus jeunes.

Il a été constaté que l'alinéa 9(a) était en conformité avec les objectifs visés, compte tenu de l'intégralité des politiques de retraite à l'âge de 65 ans, et qu'il compromettait le moins possible le droit à la liberté. Le tribunal a fait référence à des facteurs d'équilibre et aux possibilités d'arrangements spéciaux par les universités pour garder des professeurs au-delà de 65 ans, constatant qu'il existait un moyen terme entre les effets d'une retraite obligatoire et les objectifs de l'alinéa 9(a). Le tribunal a souligné que sa décision se limitait à l'influence de la charte sur les dispositions de la retraite obligatoire concernant les professeurs et les bibliothécaires.

Dans l'affaire Quereshi v. Central High School of Commerce and the Board of Education for the City of Toronto, une requête tendant à débouter le demandeur fut présentée, fondée sur les articles 7 et 11(b) de la charte.

L'argument de l'alinéa 11(b) se fondait sur l'assertion que l'intimé est confronté à une affaire pénale et se trouve donc dans la position d'une personne accusée de délit. La commission d'enquête réfuta cet argument, citant la décision de la Cour du Banc de la Reine de la Saskatchewan, dans l'affaire Kodellas v. Saskatchewan Human Rights Commission, Wahn and Glute. Il s'agissait d'une allégation de voies de fait. Même dans ces circonstances, il fut retenu que l'article 11 de la charte ne s'appliquait pas. La commission d'enquête cita également la décision de la Cour d'appel de l'Ontario dans l'affaire Re Trumbley and Fleming, retenant qu'une personne accusée de faute disciplinaire selon la Loi sur la police n'était pas inculpée de délit aux termes de l'article 11 de la charte.

L'avocat de l'intimé s'appuyait sur la décision dans l'affaire Kodellas. Toutefois, la commission d'enquête distinguait la décision dans l'affaire Kodellas parce qu'aucune circonstance spécifique suggérant un préjudice possible n'avait pu être démontrée. En citant l'article 7 de la charte pour empêcher une commission d'enquête d'entamer les procédures dans l'affaire Kodellas, la Cour du Banc de la Reine de la Saskatchewan fondait sa décision en partie sur le fait que l'affaire impliquait l'industrie de la restauration. La Cour fit remarquer que les employés de cette industrie, qui étaient au centre de l'affaire, sont très souvent des employés provisoires.

Cour suprême du Canada

L'an dernier, la Cour suprême du Canada a pris deux décisions intéressantes concernant la Loi canadienne sur les droits de la personne.

La première, c'est l'affaire Action travail des femmes v. Canadian National Railway. Un tribunal fédéral déclara que les politiques de recrutement, d'embauche et de promotion du CN n'encourageaient pas les

a cherché à obtenir du président de la commission d'enquête une assignation à comparaître pour Groom, conformément à l'article 12 de la Loi sur l'exercice des compétences légales, et de produire les notes en question.

Le paragraphe 12(1) de cette loi stipule que :

> «Le tribunal peut citer à comparaître toute personne, incluant un parti, afin de fournir :
>
> a) un témoignage sous serment ou une affirmation, lors d'une audience; et
>
> b) comme preuve, lors d'une audience, des documents ou objets spécifiés par le tribunal, relevant de l'affaire en cours et admissibles à l'audience.»

Au cours de l'audience, la commission d'enquête soutint que cet article ne pouvait être utilisé comme moyen détourné de communiquer des documents et ne lui permettait pas d'ordonner la divulgation ni l'examen de documents avant l'audience. Elle rejeta les citations adressées à Groom parce que l'audience ne portait pas sur le bien-fondé de la cause et parce qu'il n'existait aucun fait justifiant la divulgation des notes en question. La commission d'enquête déclara que la Commission pourrait obtenir une nouvelle assignation à comparaître demandant à Groom de fournir lors de l'audience la preuve du bien-fondé de la cause et de produire les documents relevant de l'affaire et admissibles à l'audience.

Deux autres points furent également commentés par la commission d'enquête. Le premier point a trait à la portée des citations à comparaître. La commission d'enquête acceptait le principe qu'une citation ne peut être émise que si les documents requis visent à présenter une preuve et relèvent de l'affaire qui fait l'objet de l'audience. La citation doit spécifier aussi précisément que possible quels sont les documents particuliers désirés.

Le second point se résume à cette question : La personne citée pour produire un document doit-elle également fournir un témoignage oral? La commission d'enquête répondit par l'affirmative. Elle déclara que son droit d'exiger la présentation de documents se limite à la présentation d'une preuve à l'audience. «L'un des moyens de s'assurer que les documents produits à l'audience serviront de preuve, c'est de demander à l'auteur de ces documents de témoigner quant à leur authenticité et aux circonstances de leur création.»

Charte canadienne des droits et libertés

Il a été décidé que la définition de l'âge (limité à 65 ans en matière d'emploi), telle que définie par le code, ne viole pas la Charte canadienne des droits et libertés dans le cas de mise à la retraite obligatoire de professeurs et bibliothécaires. Dans l'affaire McKinney and the Board of Governors et al. and seven other applications, la Cour d'appel retint que bien que l'alinéa 9(a) du code soit incompatible avec le paragraphe 15(1) de la charte, il constitue une restriction raisonnable dont la justification a été démontrée dans une société libre et démocratique, selon l'article 1 de la charte.

La commission d'enquête soutint qu'une grossesse non prévue et une fuite de gaz arrivant simultanément était une éventualité peu probable et que, même si c'était le cas, il n'était pas certain que ce fut mortel. La commission d'enquête conclut donc qu'un «risque aussi minime ne justifie pas des mesures discriminatoires générales fondées sur le sexe, touchant toutes les femmes, de l'adolescence à la quarantaine...». Tout en rendant un jugement en faveur de M^me^ Weins, la commission d'enquête ne lui accorda pas de dommages, la compagnie ayant fait preuve de bonne foi dans l'établissement de la politique en question.

Dans l'affaire Roosma v. Ford Motor Company of Canada Ltd. and The National Automobile and Agricultural Implement Workers of Canada CAW, Local 707, l'avocat-conseil de la compagnie a soutenu que si l'intimé fait valoir qu'une exigence ou une qualification est raisonnable et de bonne foi aux termes de l'alinéa 10(a) du code, il n'est pas tenu à un compromis raisonnable. Il s'agissait du cas d'un employé juif orthodoxe à qui l'on demandait de travailler deux vendredis par mois.

La commission d'enquête réfuta cet argument déclarant que l'alinéa 10(a) est une exception au code et devrait donc être interprété de façon rigoureuse. De plus, l'alinéa parle d'une exigence, d'une qualification ou d'une considération raisonnable et de bonne foi dans les circonstances. Appliquant le principe établi par la décision de la Cour suprême du Canada dans l'affaire O'Malley, la commission d'enquête retint qu'une exigence peut être qualifiée de raisonnable ou de bonne foi uniquement si un compromis entraînait des difficultés indues.

Dans sa décision, la commission traite de deux autres points. Le premier, c'est qu'un syndicat peut être cité comme intimé dans une plainte en vertu du code. La commission souligne le fait que le terme «personne» défini dans l'alinéa 45(c) du code inclut les syndicats ouvriers. De plus, l'article 8 du code s'applique à tout manquement direct ou indirect au code. L'inclusion du mot «indirect» prévoit la citation d'un syndicat en cas de plainte.

La commission d'enquête constata également que les plaintes alléguaient avec raison un manquement au code par le syndicat intimé. Les plaintes référaient à une conversation avec le vice-président du syndicat, qui aurait informé les plaignants que le syndicat ne pouvait les soutenir en raison des dispositions de la convention collective. La commission jugea que ceci suffisait à satisfaire aux exigences de l'article 8 de la Loi sur l'exercice des compétences légales.

La commission d'enquête déclara que cet article exige que l'intimé reçoive suffisamment de renseignements pour se préparer à réfuter les allégations de l'autre partie.

Dans l'affaire Roosma, le TAC, Section 707, a interjeté appel.

Dans l'affaire Johnson v. East York Board of Education et al., une autre disposition de la Loi sur l'exercice des compétences légales (article 12), a fait l'objet d'une audience préliminaire. Johnson s'était plaint de discrimination en matière d'emploi fondée sur la race, la couleur, l'ascendance, le pays d'origine et l'origine ethnique. L'un des intimés, Groom, avait pris des notes sur son observation de Johnson. La Commission

mission qu'elle fournisse au Conseil scolaire pour la ville de Toronto deux sortes de renseignements supplémentaires :

1. les noms des écoles et les dates où on allègue la discrimination dans la procédure de demande de promotion; et

2. tous les critères soi-disant offensants du Conseil scolaire pour la ville de Toronto dans son processus d'évaluation.

Le second point décidé par la commission d'enquête portait sur la prescription de deux ans établie par la Loi sur la prescription des actions, à savoir si elle était applicable aux actions conformément au Code des droits de la personne. La commission d'enquête jugea que l'inclusion de l'alinéa 33(d) dans le code exclut la prescription de deux ans stipulée dans la Loi sur la prescription des actions. La seule prescription pour déposer une plainte conformément au code est contenue dans l'alinéa 33(d). Le Conseil scolaire pour la ville de Toronto a fait appel de cette décision.

Dans l'affaire Wiens v. Inco Metals Company, la commission d'enquête devait déterminer si une politique de la compagnie, excluant de certains travaux les femmes pouvant devenir enceintes, violait le code. La compagnie considérait certains travaux comme dangereux en raison de fuites de gaz toxiques, particulièrement le carbonyle de nickel. Les plaintes étaient fondées sur les articles 4 de l'ancien code et 4(1) et 10 du nouveau code.

Dans son analyse, la commission d'enquête retint que la discrimination fondée sur la grossesse est de la discrimination fondée sur le sexe. En décidant de refuser la décision de la Cour suprême du Canada (Bliss), la commission d'enquête déclara que, même si seules quelques femmes deviennent enceintes, le fait d'user de discrimination envers ces dernières équivaut à de la discrimination fondée sur le sexe. La commission d'enquête nota qu'à la suite de cette plainte, le code a été modifié pour spécifier clairement que toute discrimination fondée sur la grossesse est de la discrimination fondée sur le sexe. Il ne s'agit pas dans ce cas de discrimination imputée parce que la mesure restrictive s'applique expressément aux femmes. Il s'agit donc de discrimination directe.

Pour défendre sa cause avec succès, la compagnie devrait établir deux points :

1. il existe un besoin objectif et réel d'imposer cette politique restrictive et discriminatoire, et donc la politique est raisonnable; et

2. les besoins de l'employée ne peuvent être remplis dans ces circonstances particulières, et donc il n'y a pas de compromis raisonnable possible, ou ce compromis ne peut être réalisé sans créer des difficultés indues à l'intimé.

La Cour retint également que l'employeur avait violé le code. En matière de dommages, la Cour décréta que lorsqu'une personne se voit refuser un emploi à cause de sa race, elle a droit à des dommages pour perte de salaire et pour atteinte à sa dignité. La Cour réduisit cependant le montant du salaire perdu en tenant compte de la période moyenne de durée d'un projet, soit 18 semaines, au lieu de la période maximum de durée d'un projet, soit 27 semaines.

Dans l'affaire Blainey et al. v. Metro Toronto Hockey Association et al., la Cour suprême de l'Ontario a pris en considération les dispositions de l'article 13 du code traitant des programmes spéciaux destinés aux personnes et groupes désavantagés. Il s'agissait de savoir si la Commission seule devait juger de la validité de la défense d'un programme spécial conformément à l'article 13 du code, ou si elle pouvait référer le cas à une commission d'enquête. La Cour retint qu'il n'existait aucune restriction explicite ou implicite à son pouvoir d'exiger une commission d'enquête dans un cas en vertu de l'article 13 du code. La Cour jugea que les parties pourraient mieux exposer leurs vues en audience publique devant une commission d'enquête que par des soumissions écrites à la Commission, comme on l'avait proposé. Un résumé de la décision de la commission d'enquête figure ci-après.

Commissions d'enquête

Dans l'affaire Justine Blainey, une commission d'enquête a aboli une politique empêchant les personnes du sexe féminin de faire partie d'équipes masculines de hockey sauf s'il n'existe dans les environs d'équipe comparable composée exclusivement de personnes du sexe féminin. La commission d'enquête a reconnu que les programmes de hockey pour filles constituaient un programme spécial selon les termes du paragraphe 13(1) du code. De tels programmes peuvent donc exclure les garçons car permettre leur participation, même limitée, aurait pour effet de compromettre les chances déjà faibles des filles de jouer dans les ligues de compétition.

Cependant, le fait que les programmes de hockey pour filles constituent un programme spécial et peuvent exclure les garçons n'implique pas que toutes les filles doivent participer à de tels programmes. La preuve n'a pas été faite que les programmes de hockey pour garçons doivent être protégés contre les filles. De plus, la preuve ne permettait pas de conclure que les programmes de hockey pour filles risquaient d'être compromis si des filles pouvaient jouer dans des équipes masculines. Dans ce cas-ci, le recours n'a pas encore été décidé.

Dans l'affaire Bhadauria v. The Toronto Board of Education, la décision préliminaire de la commission d'enquête portait sur deux points. Le premier portait sur une demande de renseignements sur la plainte, présentée par le Conseil scolaire pour la ville de Toronto. La disposition légale pertinente est l'article 8 de la Loi sur l'exercice des compétences légales, qui stipule que l'intimé doit avoir des «renseignements raisonnables sur toute allégation». La commission d'enquête soutint que les exigences de l'article 8 étaient analogues mais non identiques à celles des procédures civiles. Ce que stipule l'article 8 de la loi, c'est que l'intimé doit avoir suffisamment de renseignements pour pouvoir réfuter les allégations. Dans ce cas, la commission d'enquête exigeait de la Com-

La Cour divisionnaire révoqua cependant l'ordonnance de la commission d'imputer les frais à la compagnie, faisant valoir que, dans les audiences traitant des droits de la personne, les frais peuvent être imputés à la Commission des droits de la personne seulement, conformément au paragraphe 40(6) du code.

Dans l'affaire Piazza v. Airport Taxicab, la commission d'enquête constata que Mme Piazza avait été victime de harcèlement sexuel et avait été injustement licenciée. La commission d'enquête ordonna à l'intimé de dédommager Mme Piazza de la perte de salaire pendant toute la période où elle a été sans travail à la suite de son licenciement.

Tout en reconnaissant les allégations de discrimination, la Cour divisionnaire déclara que les dommages devraient être calculés comme pour un cas de licenciement injustifié et donc être basés sur une période représentant un préavis raisonnable moins toute atténuation des dommages. La Commission peut interjeter appel de la décision de la Cour divisionnaire devant la Cour d'appel de l'Ontario.

Dans l'affaire Canada Trust Company v. Ontario Human Rights Commission, la Cour suprême de l'Ontario jugea qu'elle avait compétence pour déterminer si les termes de la fiducie établie par la Fondation Leonard violaient le code avant que la Commission ne puisse terminer son enquête et décider s'il y avait lieu de nommer une commission d'enquête. La fiducie en question contenait une clause restrictive à connotation raciale ainsi que l'énoncé suivant : «le disposant croit que la race blanche, dans son ensemble, est mieux qualifiée par nature à se voir confier le développement de la civilisation et le progrès du monde, dans ses grandes lignes». Tout en déclarant que l'énoncé contenant les remarques raciales était inopérant, la Cour conclut que la fiducie ne répondait pas à la notion de «services» telle que définie dans l'article 1 du code et, qu'en conséquence, la Commission ne pouvait avoir juridiction sur cette affaire. Par ailleurs, si la fiducie constituait un service, elle était exemptée en raison de l'article 17 du code. Cet article permet aux organismes à buts spéciaux de restructurer la prestation de leurs services aux personnes pareillement identifiées. La Commission a interjeté appel.

Dans l'affaire Prashad v. Commercial Union Assurance of Canada, la Cour divisionnaire a rejeté la décision de la Commission qui, après avoir reconsidéré la question, avait décidé de constituer une commission d'enquête. L'annulation était fondée sur le fait que la Commission était revenue sur sa décision sans qu'aucun nouveau fait n'ait été soumis pour le justifier. La Cour a également cité le «délai excessif» entre la décision originale de la Commission et sa nouvelle décision, ainsi que le fait que des propositions de règlement n'auraient pas dû être portées devant la Commission. Cette dernière a interjeté appel.

Dans l'affaire Scott v. Foster Wheeler Limited, la compétence de la commission d'enquête de traiter d'une plainte a été contestée devant la Cour divisionnaire. Il s'agissait d'une plainte de discrimination dans le cadre d'un projet d'emploi en dehors de l'Ontario. La Cour déclara que la preuve avait établi que le recrutement avait eu lieu en Ontario, et que la commission avait donc compétence en cette affaire.

INITIATIVES JURIDIQUES
1987-1988

Introduction

En 1987-1988, le droit jurisprudentiel relatif au Code des droits de la personne a continué d'évoluer grâce à d'importantes décisions des commissions d'enquête et des tribunaux. Parmi ces décisions figurent deux jugements de la Cour suprême du Canada qui ont eu des retombées importantes et positives sur la protection des droits de la personne en Ontario et dans tout le Canada. Nous présentons dans ce chapitre un résumé des décisions les plus importantes qui ont été prises au cours de l'exercice.

La Commission ontarienne des droits de la personne compte cinq conseillers juridiques permanents. En plus de fournir des conseils juridiques et des directives à la Commission et à son personnel, ils participent souvent à des activités d'éducation du public, à la demande de groupes et organismes communautaires. L'an dernier, les conseillers juridiques ont participé à des conférences, présentations et simulations d'audience pour de nombreuses organisations, dont la Société du barreau du Haut-Canada, l'Association du barreau canadien de l'Ontario, le Collège de police de l'Ontario, la Commission de révision des loyers, l'Association canadienne des organismes statutaires pour la protection des droits de l'homme (ACOSPDH), la Faculté de droit de l'Université de Toronto et la Ontario Hospital Association. Les conseillers ont également participé aux travaux de divers comités, dont celui sur le dépistage obligatoire de drogues au travail, organisé par l'Association du barreau canadien de l'Ontario, et à un comité sur les droits des minorités. De plus, les conseillers de la Commission ont entamé le dialogue avec plusieurs organismes gouvernementaux et autres, y compris la Commission de l'équité salariale et le Fonds d'action et d'éducation juridiques pour les femmes (FAEJ).

Décisions

Les tribunaux

La décision de la Cour divisionnaire dans l'affaire Karumanchiri, Ng and Yan v. Liquor Control Board of Ontario et al., a servi à promouvoir la cause des victimes de discrimination. La commission d'enquête constata que l'employeur avait fait preuve de discrimination envers MM. Karumanchiri, Ng et Yan en nommant un employé de race blanche au poste de directeur des services de laboratoire. La Cour divisionnaire confirma cette constatation.

L'aspect le plus important de cette affaire fut le jugement ordonnant que M. Karumanchiri soit nommé directeur des services de laboratoire. La compagnie soutint qu'il ne relevait pas de la compétence de la commission d'enquête d'ordonner que M. Karumanchiri soit nommé à un poste qui était déjà occupé. La Cour divisionnaire réfuta cet argument, jugeant qu'il faut accorder au code une interprétation plus large afin de remédier, autant que possible, aux effets de la discrimination, ou de prévenir celle-ci.

M. Anand a discuté avec le Centre d'aide et de défense juridique pour les handicapés et la Blind Organization of Self-Help Tactics, les alliances urbaines de Toronto, Windsor et London, les responsables de la Commission des transports urbains de Toronto et la Commission de police du Toronto métropolitain. Il a assisté à des conférences parrainées par la Tai Chi Association, la Personnel Association of Ontario et la Human Rights and Racial Equality Association of Hamilton and District. Il a également rencontré la Coalition pour les droits des lesbiennes et des hommes gais en Ontario, le Fonds d'action et d'éducation juridiques pour les femmes (FAEJ), l'Association of Black Trade Unionists, l'Organisation nationale des femmes immigrantes et des femmes appartenant à une minorité visible du Canada, la Fédération du travail de l'Ontario et le Peel Multiculturalism Council.

Ontariens ont le droit d'être jugés selon leurs propres mérites, et non récompensés ou pénalisés en vertu de stéréotypes ou de statistiques sur des caractéristiques de groupes.

La Commission a également soumis un mémoire au Groupe d'étude sur l'accès aux professions et aux métiers en Ontario. Ce dernier a pour but d'étudier l'existence de barrières discriminatoires contre les personnes désirant faire reconnaître au Canada des diplômes obtenus à l'étranger.

Éducation publique et relations communautaires

En mai 1987, la Commission a été l'hôte de la 15e conférence annuelle de l'Association canadienne des organismes statutaires pour la protection des droits de l'homme (ACOSPDH). Environ 200 délégués de ces organismes canadiens ont participé à cette conférence.

Parmi les résolutions adoptées par l'Association au cours de cette conférence, figure la suivante :

> Que l'Association canadienne des organismes statutaires pour la protection des droits de l'homme (ACOSPDH) demande instamment à tous les ministres de l'Éducation d'inclure au programme scolaire l'enseignement des droits de la personne, conformément aux principes énoncés dans la Déclaration universelle des droits de l'homme, dans la Charte canadienne des droits et libertés ainsi que dans les lois fédérales, provinciales et territoriales pertinentes. Cela comprendrait la formation en cours d'emploi des professeurs pour s'assurer de l'efficacité de cet ajout au programme.

Les sujets traités au cours des séances et ateliers comprenaient les événements internationaux et leurs répercussions sur les droits de la personne, le rôle des municipalités dans les relations interraciales, les personnes handicapées et les compagnies d'assurances, les examens médicaux d'embauche et le dépistage obligatoire de drogues, les considérations relatives à la preuve que l'on estime raisonnables dans le cas des personnes handicapées.

Pour marquer le 25e anniversaire de la Commission de l'Ontario, un banquet a été offert durant cette conférence.

Au cours des premiers mois de 1988, le commissaire en chef a rencontré les représentants et les dirigeants d'organismes communautaires et de groupes de défense des droits, de syndicats, d'entreprises commerciales et industrielles, et d'organismes religieux. Il a également prononcé des discours à diverses occasions, dont un séminaire sur le SIDA parrainé par la Commission, les cérémonies marquant le début de la Black Awareness Week à Kingston, le séminaire du Cabinet de la région centrale de la Ligue des droits de la personne, une séance éducative au Temple Holy Blossom de Toronto, et un séminaire sur les conseillers juridiques des sociétés et la loi, parrainé par la Société du barreau du Haut-Canada.

L'une des priorités de l'exercice 1988-1989 consistera à améliorer, rationaliser et équilibrer les procédures relatives aux plaintes. La conciliation et le respect du code sont les fonctions primordiales de la Commission et représentent l'essentiel de ses ressources financières et humaines. Des procédures cohérentes et équitables et l'élimination des délais excessifs dans le règlement des plaintes sont des éléments indispensables aux intérêts de tous les groupes que sert la Commission. Un manuel des procédures, d'usage interne aussi bien qu'externe, sera mis au point au cours de l'exercice 1988-1989.

La formation permanente du personnel deviendra une priorité, de même que la réduction à six mois en moyenne du délai pour résoudre les cas.

Des ressources seront prévues pour traiter la charge de travail accrue de la Division de la conciliation et du respect du code, et pour renforcer les tâches administratives et juridiques de la Commission.

La nature de plus en plus litigieuse des cas a nécessité une intervention accrue d'avocats pour les résoudre. Le nombre plus élevé de plaintes en commission d'enquête, d'appels des décisions des commissions et de demandes d'examen judiciaire exigent un support juridique plus important. À cet effet, une unité juridique indépendante sera mise sur pied; elle sera composée d'avocats indépendants du ministère du Procureur général, dont les connaissances toucheront spécifiquement le domaine des droits de la personne.

Promotion et défense des droits

Le commissaire en chef a établi de nombreux liens avec les groupes que sert la Commission et il les consulte régulièrement. Les consultations avec les représentants des plaignants et des intimés constitueront un élément essentiel de l'étude des procédures visant au respect du code car elles permettront de prendre connaissance de leurs suggestions et de leurs critiques concernant les procédures en vigueur.

Il est important que la Commission et les autres organismes qui s'occupent activement de promouvoir les droits de la personne et l'égalité des droits puissent se faire entendre, surtout lorsque ces droits sont en danger. À cet effet, la Commission a fait part de ses observations au Comité sénatorial permanent des affaires juridiques et constitutionnelles au sujet du projet de loi C-55 qui prévoit une nouvelle politique pour la détermination du statut de réfugié. La Commission a également exprimé son inquiétude au sujet de l'Entente du Lac Meech devant le Comité spécial sur la réforme constitutionnelle.

Le commissaire en chef a également rencontré le Comité permanent de l'administration de la justice au sujet du projet de loi 2, pour exprimer l'appui de la Commission à l'initiative du gouvernement visant à empêcher, pour ce qui est des primes d'assurance, toute discrimination fondée sur le sexe, l'âge, l'état matrimonial ou familial, ou sur un handicap, tel que défini dans le code.

Dans sa présentation, le commissaire en chef a déclaré qu'il était du devoir de la Commission de promouvoir le principe selon lequel tous les

INITIATIVES DE LA COMMISSION
1987-1988

Réorganisation de la Commission

Vers la fin de 1987, la Commission était transférée du ministère du Travail au nouveau ministère des Affaires civiques. Ce ministère abrite également la Division des relations civiques et multiculturelles et la Direction générale des rapports entre les races.

Par ailleurs, la Commission a fait l'objet d'autres changements importants et son budget de base a été sensiblement augmenté. Avec la nomination de M. Anand, le 4 janvier 1988, ont commencé la réorganisation des activités de la Commission et l'établissement de nouvelles priorités. De nouvelles structures et d'importants changements sont prévus dans les programmes au cours de l'exercice 1988-1989.

On projette également d'assurer une plus grande autonomie à la Commission en rendant son fonctionnement de moins en moins dépendant du gouvernement.

La Cour suprême du Canada a reconnu l'importance quasi constitutionnelle du Code des droits de la personne. La Commission reconnaît que pour appliquer le code avec force et autonomie, celui-ci ne doit pas dépendre, ni sembler dépendre, du gouvernement au pouvoir. Pour souligner cette indépendance, la Commission quittera les locaux gouvernementaux durant l'exercice 1988-1989; cette mesure s'appliquera à chacun de ses quinze centres répartis dans la province.

La défense des droits et la prévention de la discrimination ne sont possibles à long terme qu'à l'aide d'un programme sérieux d'éducation et de relations publiques. Une unité d'information et d'éducation du public sera mise sur pied; elle sera chargée de communiquer aux médias et aux collectivités de l'Ontario les politiques et pratiques de la Commission ainsi que les droits et responsabilités établis par le code. Elle fournira aux commissaires et au personnel une aide spécialisée en s'occupant des recherches, en créant des modèles et des outils pédagogiques et en assurant la coordination de la prestation du programme.

La Commission créera une Unité des politiques et de la recherche pour qu'elle l'aide à établir ses propres politiques et à prendre position relativement à un plus grand nombre de questions des droits de la personne et de justice sociale qui méritent attention et intervention. Elle permettra également à la Commission de mieux aider le public en ce qui a trait à l'interprétation du code en préparant des énoncés de politiques et des directives.

La création d'une nouvelle unité systémique permettra d'aborder de façon plus active les cas de discrimination systémique. À long terme, elle réduira le nombre de plaintes en éliminant, relativement à ce genre de discrimination, les obstacles à l'égalité des chances auxquels se heurtent les minorités raciales, les femmes, les personnes handicapées et les autres groupes minoritaires.

M. Robert G. Paris, commissaire

Nommé à la Commission en février 1987, M. Paris est directeur du Centre de traduction et de documentation de l'Université d'Ottawa. Diplômé de l'Université Laval et d'Osgoode Hall, M. Paris est devenu membre du Barreau en 1954. Il est également professeur à temps partiel à la Faculté de droit de l'Université d'Ottawa.

M. Gene Rhéaume, commissaire

Originaire de la région de Peace River en Alberta, M. Rhéaume est diplômé des universités de Saskatchewan et de Colombie-Britannique. Il a été député fédéral des Territoires du Nord-Ouest, de 1963 à 1965. Il agit actuellement en qualité d'expert-conseil en affaires autochtones, après avoir été président national du Indian Housing Task Force. Il est membre honoraire à vie de cinq associations de Métis, d'Indiens et d'Indiens non inscrits. Le deuxième mandat de M. Rhéaume à la Commission a expiré en février 1988.

M. Louis Lenkinski, commissaire

Membre de l'Union internationale des rembourreurs pendant de nombreuses années, M. Lenkinski en a été le représentant commercial de 1958 à 1969. Depuis, il a assumé les fonctions de directeur des projets et de secrétaire administratif du Conseil du travail du Toronto métropolitain. En 1975, il était nommé adjoint de direction de la Fédération du travail de l'Ontario. En 1984, il devenait membre à temps partiel de la Commission des relations de travail de l'Ontario. Participant activement au conseil d'administration de nombreux organismes communautaires, M. Lenkinski a été nommé commissaire en juillet 1987 pour une période de trois ans, et il est présentement le rédacteur en chef du bulletin Affirmation.

Mme Lilian Ma, commissaire

Nommée à la Commission en mars 1986, Mme Ma est actuellement associée de recherche au département de biochimie de l'Université de Toronto. Très active au sein de la collectivité, Mme Ma a été administratrice et membre de divers organismes : Conseil ethnoculturel du Canada, Conseil national des Canadiens-Chinois, Organisation nationale des femmes immigrantes et des femmes appartenant à une minorité visible du Canada et Conseil des Canadiens-Chinois de l'Ontario. Elle est membre du Comité des droits à l'égalité, mis sur pied par le Conseil canadien de développement social afin d'administrer le programme de contestation de la Cour fédérale.

Mme Shirley O'Connor, commissaire

Mme O'Connor, qui est présidente de la Ontario Native Women's Association, habite à Sioux Lookout, en Ontario. Elle a été directrice du Nishnawbe Gamik Friendship Centre et membre de la Chambre de commerce de Sioux Lookout et du Town Council Economic Development Committee de 1984 à 1986. Mme O'Connor a également fait partie du conseil d'administration de l'hôpital général de Sioux Lookout et de la Ontario Metis and Aboriginal Association.

vaillé récemment à titre de clerc pour un juge de la Cour suprême du Canada.

M. A.J. Diamond, commissaire

Architecte et urbaniste renommé depuis plus de vingt ans, M. Diamond a remporté de nombreux prix nationaux et internationaux en architecture et en urbanisme. Diplômé des universités du Cap, de Pennsylvanie et d'Oxford, maître de conférence et professeur dans diverses universités au Canada et aux États-Unis, M. Diamond a été, entre autres, président du Comité consultatif sur le design de la Commission de la capitale nationale.

M^me^ Catherine L. Frazee, commissaire

M^me^ Frazee est commissaire à la Commission ontarienne des droits de la personne depuis février 1985. Elle vient d'être renommée pour un second mandat. Coordonnatrice des normes relatives aux produits chez Pétroles Esso Canada, M^me^ Frazee est membre du conseil d'administration de l'Association canadienne des paraplégiques et a travaillé à titre bénévole au sein de divers organismes communautaires dont Help Line, Jeux olympiques spéciaux du Canada pour les handicapés intellectuels, Année internationale des personnes handicapées et Daybreak Community for Mentally Disabled Adults.

M^me^ Elizabeth Kishkon, commissaire

Résidente de Windsor, M^me^ Kishkon a été nommée commissaire en mars 1986. Elle a commencé sa carrière comme commentatrice politique et intervieweuse à la CBC en 1971. M^me^ Kishkon fait partie du conseil d'administration de divers organismes de services sociaux et participe de façon active aux projets communautaires et aux affaires municipales. Elle a été membre du Conseil municipal de Windsor et vient d'être élue première femme maire de cette ville.

M. John Bennett, commissaire

Domicilié à Sault Ste. Marie, M. Bennett travaille depuis 1950 à l'Algoma Steel Corporation Ltd. Militant syndical, M. Bennett est également membre du conseil d'administration de Centraide, du Collège d'arts appliqués et de technologie de Sault Ste. Marie, de l'Association canadienne pour la santé mentale, de l'hôpital Plummer Memorial, de Community Futures, de Soogoma Industries et de la Fondation Plummer. Le mandat de M. Bennett a pris fin en février 1988.

Mme Leslie Blake-Côté, commissaire

Mme Blake-Côté possède une vaste expérience en enseignement, journalisme, consultation et relations publiques. Elle est rédactrice pour divers magazines et journaux locaux et nationaux, et documentaliste-animatrice de nombreux documentaires à la télévision. Elle a déjà oeuvré dans le domaine des droits de la personne et à des activités communautaires et bénévoles. Mme Blake-Côté a donné sa démission au moment où elle a quitté la province.

M. John T. Cochrane, commissaire

M. Cochrane est membre du conseil exécutif de la Section 6500 de la United Steelworkers of America, et vice-président du Conseil d'ouvriers de Sudbury et du district. Il sert d'agent de liaison entre la Commission des accidents du travail et les Comités santé et sécurité des syndicats locaux, recueillant des renseignements au sujet de demandes d'indemnisation des travailleurs. M. Cochrane est également membre du Comité des services d'emploi pour les jeunes, et ancien directeur de la Elizabeth Fry Society.

Mme Reva Devins, commissaire

Nommée à la Commission en février 1987, Mme Devins a étudié à l'Université York. Elle est diplômée en droit de l'Université de Harvard et d'Osgoode Hall. Elle a tra-

nombreux prix humanitaires, notamment du prix national en relations humaines du Conseil canadien des chrétiens et des juifs, il a également présidé une mission commerciale internationale organisée par le ministère de l'Industrie et du Tourisme de l'Ontario et la Chambre de commerce Canada-Israël. Il a été délégué à l'Atelier international de l'UNESCO sur le racisme et la discrimination, en 1971. Il a également été président national de la Ligue des droits de la personne de B'nai Brith. M. Ronson vient d'accepter un nouveau mandat.

M. Dan McIntyre, commissaire aux rapports entre les races

Diplômé en administration des affaires et en service social, M. McIntyre est commissaire depuis janvier 1986. Avant d'être nommé directeur de la région ontarienne de la Commission canadienne des droits de la personne, en 1982, il était chef des relations communautaires pour cette Commission. Militant syndical, il a également été président de la Section 70176 de l'Alliance de la fonction publique du Canada. Au début de sa carrière, il avait été agent des droits de la personne, travailleur social et directeur des services à la jeunesse, au Nouveau-Brunswick. M. McIntyre n'est plus membre de la Commission.

M. George W. Bancroft, commissaire

M. Bancroft est professeur et ancien président du département d'histoire, philosophie et sociologie de l'éducation, à l'Université de Toronto. Ses nombreux écrits traitent d'éducation et de sociologie et des relations entre groupes. De 1980 à 1983, il était directeur administratif de la Division des relations civiques et multiculturelles de l'ancien ministère des Affaires culturelles et des Loisirs. Il fait partie du conseil d'administration du Conseil canadien des chrétiens et des juifs (région de l'Ontario).

LA COMMISSION

M. Raj Anand, commissaire en chef

Originaire de New Delhi (Inde), M. Anand a été nommé à la tête de la Commission le 4 janvier 1988. Diplômé magna cum laude en mathématiques de l'Université Queen's, il a fait ses études à la Faculté de droit de l'Université de Toronto. Il est membre du Barreau depuis 1980. Détenteur de nombreuses bourses et distinctions académiques, M. Anand est également l'auteur d'articles juridiques sur les dispositions de la charte ayant trait aux droits à l'égalité, les abus en psychiatrie et les droits des enfants. En 1987, il représentait à lui seul le Groupe d'étude sur l'effet de la loi concernant la violation de propriété publique sur les jeunes et les minorités. Avant d'être nommé commissaire en chef, M. Anand était un associé du cabinet d'avocats Cavalluzzo, Hayes and Lennon de Toronto.

Chanoine Borden C. Purcell, président sortant

Membre de la Commission depuis janvier 1978, le chanoine Purcell a terminé son second mandat à la présidence de la Commission en décembre 1987. Premier ecclésiastique à présider une telle commission en Ontario, le chanoine Purcell a organisé et convoqué de nombreuses conférences oecuméniques traitant du racisme, des réfugiés et des autres personnes défavorisées. Dans le domaine des droits de la personne, il participe aux activités de nombreux organismes internationaux, et il est membre du conseil national de la Fondation canadienne des droits de l'homme et membre du comité consultatif du Conseil canadien des églises.

M. R. Lou Ronson, vice-président

M. Ronson a quitté récemment la présidence du conseil de la Workwear Corporation of Canada et siège au conseil d'administration de plus d'une vingtaine d'entreprises et d'organismes communautaires. Lauréat de

Je tiens ici à rendre hommage à mon prédécesseur, le chanoine Borden Purcell, de son inlassable dévouement à la cause des droits de la personne, tant au palier local qu'international.

Après avoir consacré près de vingt ans à la Commission, où il a occupé divers postes, George Brown, directeur administratif, a décidé de retourner au monde universitaire, où il participe à un important projet de recherches visant à promouvoir les droits de la personne. Nous le remercions de sa contribution et de ses efforts dans la poursuite de la justice et de l'excellence, et nous lui souhaitons un franc succès dans ses nouveaux projets.

MESSAGE DU COMMISSAIRE EN CHEF

J'ai eu la chance de me voir confier le rôle de commissaire en chef durant l'une des périodes sans doute les plus dynamiques et les plus stimulantes de l'histoire des droits de la personne, non seulement en Ontario, mais dans le reste du pays.

Au cours des six dernières années, l'expansion et le développement ayant trait aux mesures législatives qui nous intéressent et au fonctionnement de notre organisme ont pris une ampleur sans précédent et j'espère, avec mes collègues, avoir l'occasion d'élargir davantage le champ de nos activités et de nos initiatives.

En premier lieu, il nous faudra améliorer, rationaliser et mieux équilibrer les procédures relatives aux plaintes. Au cours des dix dernières années, la Commission a manqué de ressources, surtout depuis la mise en application de changements importants apportés au code à partir de 1981. De plus amples ressources permettront de corriger ce problème dans une certaine mesure, mais cela n'est cependant pas suffisant. Nous avons déjà entrepris un remaniement complet de nos procédures et prévoyons la préparation d'un manuel d'usage interne aussi bien qu'externe, afin de permettre au public de se familiariser avec la procédure à suivre. Nous pourrions ainsi réduire à six mois la durée de règlement des plaintes.

En second lieu, je préconise la création d'un certain nombre d'unités distinctes de programmation. L'unité chargée de l'éducation du public et de l'information établira et maintiendra des rapports avec les médias, le public et les groupes que nous servons dans le but de conscientiser tous les Ontariens quant à leurs droits et à leurs responsabilités en vertu du Code des droits de la personne.

La création d'une Unité des politiques et de la recherche est fondée sur ma conviction que l'étude des droits de la personne nécessite une approche globale pour mieux appuyer nos activités dans chaque cas particulier.

L'utilité d'une unité systémique a été reconnue depuis quelque temps déjà; elle pourrait traiter les cas de discrimination à plus vaste échelle et collaborer avec les entreprises afin de s'assurer que leurs politiques et méthodes ne contreviennent pas involontairement au code.

Un service juridique renforcé ainsi que des ressources administratives supplémentaires pourraient nous aider à avoir de moins en moins de liens de dépendance avec le gouvernement.

Enfin, j'ai l'intention de mettre en valeur la Commission dans son rôle de défenseur et en tant que ressource communautaire importante. À cet effet, nous consulterons régulièrement les divers groupes que nous servons, le monde des affaires et de l'industrie, les syndicats, organismes gouvernementaux, institutions religieuses, écoles, médias, groupes communautaires et particuliers, afin que nos politiques et procédures permettent un règlement plus rapide et plus efficace des cas traitant des droits de la personne.

Ontario Human Rights Commission
Commission ontarienne des droits de la personne

Office of the Chief Commissioner
Bureau du Commissaire en chef

400 University Ave
Toronto, Ontario
M7A 1T7
416/965-6841

Juin 1988

Monsieur Gerry Phillips
Ministre des Affaires civiques
77, rue Bloor ouest
6e étage
Toronto (Ontario)
M7A 2R9

Monsieur le ministre,

Conformément au paragraphe 30(1) du Code des droits de la personne (1981), j'ai le plaisir de vous présenter le rapport annuel de la Commission ontarienne des droits de la personne, pour l'exercice 1987-1988, qui doit être déposé à l'Assemblée législative de l'Ontario.

Veuillez agréer, Monsieur le ministre, l'assurance de mes sentiments les plus distingués.

Le commissaire en chef,

Raj Anand

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COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

RAPPORT ANNUEL

1987-1988

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1987 1988



Commission ontarienne des droits de la personne

ONTARIO HUMAN RIGHTS COMMISSION

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ANNUAL REPORT
1988-1989

ONTARIO HUMAN RIGHTS COMMISSION ANNUAL REPORT 1988-1989

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Ontario Human Rights Commission
Commission ontarienne des droits de la personne

12th Floor
400 University Avenue
Toronto, Ontario
M7A 2R9

12e étage
400, avenue University
Toronto (Ontario)
M7A 2R9

Chief Commissioner
Commissaire en chef

(416) 965-6847

June 1989

The Honourable Gerry Phillips
Minister of Citizenship
77 Bloor Street West
6th Floor
Toronto, Ontario
M7A 2R9

Dear Mr. Phillips:

Pursuant to Section 30(1) of the *Human Rights Code, 1981*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1988/89 for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1989.

Yours sincerely,

Catherine Frazee

Catherine Frazee
Chief Commissioner

CHIEF COMMISSIONER'S REMARKS

Human Rights issues have been at the centre of a number of pressing concerns facing the people of Ontario in the past year. Whether one speaks of immigration and refugees, the Meech Lake Accord, or race relations and policing, our capacity to resolve these issues in a satisfactory manner requires the application of fundamental human rights principles. It is the mandate of the Ontario Human Rights Commission through its responsibility for the *Ontario Human Rights Code* to be a leader of and catalyst for responsible human rights practices in Ontario.

The Ontario Human Rights Commission welcomes the Government's continuing commitment to a strong, revitalized Commission. In keeping with this direction, the Commission has worked towards heightening the profile of human rights on the public policy agenda. We have written briefs and made presentations on key issues such as policing, workers' compensation and immigration. We have responded to various ministries' requests for assistance in developing legislation and policies that are responsive to the *Human Rights Code*. We have also begun the process of establishing a structure for the Commission that will enable us to fulfil our mandate and respond more effectively to the needs of both the public and private sectors.

Systemic investigation will provide the leading edge in the efforts of the Commission to be proactive in its bid to fight discrimination in the workplace. Mandatory, universal employment equity for the province of Ontario is a primary goal of the Commission. It is our belief that the implementation of a mandatory program will be one of the most effective methods for redressing outstanding systemic imbalances resulting from discrimination. The responsibility for confronting these barriers to equality falls squarely within the *Human Rights Code*. Employment equity legislation will place all employers on an equal footing and consolidate community expectations in this area.

In order to function effectively, it is essential that the Commission remain responsive to and aware of the needs of the communities we serve. We will continue to work towards building effective networks and welcome community assistance in doing so.

The challenges and opportunities that we will be encountering as our community evolves due to changing demographics will also increase our focus on human rights. One measure of our success will be our capacity to develop solutions that are consistent with respecting the dignity of all persons in Ontario.

THE COMMISSION

Chief Commissioner: Raj Anand
Born in New Delhi, India, Mr. Anand assumed the Commission's highest office on January 4, 1988. A *magna cum laude* graduate in Mathematics of Queen's University, he studied at the Faculty of Law, University of Toronto, and was called to the Bar in 1980. The recipient of numerous academic honours and scholarships, Mr. Anand has also authored legal papers on the Charter's equality rights provisions, psychiatric abuses and children's rights. In 1987, he was appointed as a one-person Task Force on the Law Concerning Trespass to Publicly-Used Property as it Affects Youth and Minorities. Prior to his appointment as Chief Commissioner, Mr. Anand was a partner in the Toronto law firm of Cavalluzzo, Hayes and Lennon.

Vice-Chair: R. Lou Ronson
Mr. Ronson is the recently retired Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce. He was a delegate to the UNESCO International Workshop on Racism and Discrimination in 1971 and is a former National Chairman of the League for Human Rights of B'nai Brith Canada.

Commissioner: George W. Bancroft
Dr. Bancroft is a professor and former Chairman of the Department of History, Philosophy and Sociology of Education of the University of Toronto. He has written extensively on educational and social issues and inter-group relations. From 1980 to 1983, Dr. Bancroft was Executive Director of the Multiculturalism and Citizenship Division of the former Ministry of Culture and Recreation. He serves on the Board of Directors of the Canadian Council of Christians and Jews (Ontario Region).

Commissioner: John T. Cochrane
Mr. Cochrane is an Executive Board member of Local 6500, United Steelworkers of America and Vice-President of the Sudbury and District Labour Council. He acts as an intermediary between the Workers' Compensation Board and the local union's Safety and Health Committees, gathering information relating to Workers' Compensation claims. Mr. Cochrane is also a member of the Youth Employment Services Committee and a former Director of the Elizabeth Fry Society.

Commissioner: Reva Devins
Appointed to the Commission in February 1987, Ms. Devins completed her undergraduate degree at York University and holds law degrees from Osgoode Hall and Harvard University. She served as law clerk to a Justice of the Supreme Court of Canada.

Commissioner: A.J. Diamond
A renowned architect and planner for over 20 years, Mr. Diamond has won many national and international awards in both architecture and urban planning. A graduate of the Universities of Capetown, Pennsylvania and Oxford, and lecturer/professor at a number of universities in Canada and the United States, Mr. Diamond has, among other endeavours, acted as Chairman of the National Capital Commission Design Advisory Committee. Mr. Diamond's term as a Commissioner expired in February 1989.

Commissioner: Catherine L. Frazee
Ms. Frazee has been a Commissioner with the Ontario Human Rights Commission since February 1985, and has recently been reappointed for a second term. She is currently employed as Coordination Officer for Amnesty International. Ms. Frazee holds board membership in the Canadian Paraplegic Association and has actively served as a volunteer with a variety of community organizations such as the Help Line, the Canadian Special Olympics for the Mentally Disabled, the International Year of Disabled Persons and Daybreak Community for Mentally Disabled Adults.

Commissioner: Elizabeth Kishkon
A resident of Windsor, Ms. Kishkon was appointed to the Commission in March of 1986. She began her professional career as political commentator and interview host for the CBC in 1971, while still participating on many boards of various social service agencies. An active participant in community projects and municipal affairs, Ms. Kishkon was a member of Windsor City Council and was elected as the City's first woman Mayor.

Commissioner: Louis Lenkinski
A member of the Upholsterers' International Union for many years, Mr. Lenkinski served as its business representative from 1958 to 1969. Since then, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour, and in 1984 was appointed a part-time member of the Ontario Labour Relations Board. Actively involved on the executive of a number of community organizations, Mr. Lenkinski was appointed to the Commission in July 1987.

Commissioner: Lilian Ma
Ms. Ma was appointed to the Commission in March 1986. Extensively involved in the community, Dr. Ma has held executive and member positions on the Canadian Ethnocultural Council, Chinese Canadian National Council, National Organization of Immigrant and Visible Minority Women of Canada and Council of Chinese Canadians in Ontario. As well, she sits as a member of the Equality Rights Panel which was set up by the Canadian Council on Social Development to administer the federal Court Challenge program. Dr. Ma resigned as a Commissioner to accept a position as Chief of Public Education, Race Relations and Cross-Cultural Understanding with the Department of Secretary of State.

Commissioner: Shirley O'Connor
Ms. O'Connor, who is President of the Ontario Native Women's Association, is a resident of Sioux Lookout. She is a former Executive Director of the Nishnawbe Gamik Friendship Centre and was a member of the Sioux Lookout Chamber of Commerce and the Town Council Economic Development Committee from 1984 to 1986. Ms. O'Connor also served on the Governing Board of the Sioux Lookout General Hospital and on the Board of Directors of the Ontario Métis and Non-Status Indian Association.

Commissioner: Robert G. Paris
Appointed to the Commission in February 1987, M. Paris is currently Director of the Centre for Legal Translation and Documentation at the University of Ottawa. A graduate of both Laval University and Osgoode Hall Law School, M. Paris was called to the Bar in 1954. He is also a part-time professor in the Faculty of Law, University of Ottawa.

Commissioner: David Philpott
Mr. Philpott was appointed to the Commission in March 1989, and brings with him extensive experience acquired through his involvement primarily with the private sector. Mr. Philpott graduated from the School of Architecture, University of Toronto, and has worked in contracting, finance and investment, commercial real estate development and as a consultant. At present, Mr. Philpott operates his own company and he holds directorship in four other organizations including the Canadian Opera Company. Mr. Philpott has written a best-selling book entitled *Dangerous Waters*.

EXECUTIVE DIRECTOR'S REMARKS

The past year has been one of dynamic change for the Commission. We have recruited a management team of committed professionals dedicated to an independent, responsive Human Rights Commission. It is this team that will form the basis of our endeavours in the upcoming years as we build a forward looking, more effective organization.

The process of strategic planning is already under way to implement the organization's long-term goals of advocacy, independence and support to our various publics. We have designed and implemented an organizational framework and management structure that reflects our legislated mandate under the *Human Rights Code*.

As outlined in the following pages, the Commission has established an independent Legal Unit and, subject to government administrative requirements, has assumed greater control over its financial and administrative affairs.

A number of major policy initiatives have been undertaken following extensive community consultation.

A communications strategy is being developed which will enable us to respond more effectively to public scrutiny and to develop a proactive program of outreach and human rights training.

Our review of compliance procedures, which is scheduled for completion in the fall of 1989, will form the basis for coherent staff training, consistent case processing and improved case processing time. The Compliance and Systemic Units are working together to develop a rational, consistent approach for the handling of investigations. The new Systemic Unit will serve as a focal point for expertise and strategy for the handling of cases in this vital area.

The Commission is committed to operating as a model employer. We are therefore reviewing and developing internal practices that fully reflect our program commitments and our mandate to provide equality of opportunity pursuant to the *Human Rights Code*.

The Commission is looking forward to working with other Ministries in developing their policies in human rights-related areas. We welcome the opportunity to work together as a team to ensure that human rights is an integral part of Ontario's future.

COMMISSION INITIATIVES 1988/89

A major reorganization of the Commission's programs, structure and operations was the chief priority during the fiscal year. The process began with the appointment of Raj Anand as Chief Commissioner in January, 1988 with a view to narrowing the gap between the community's high expectations of the Commission, resulting in part from a greatly expanded *Human Rights Code* in 1982, and a growing inability on the part of the Commission to deliver its programs effectively. A rapidly increasing complaint volume - an increase of 130 percent between 1981/82 and 1984/85 - outstripped the Commission's capacity to fully implement the 1982 amendments. In addition, the Commission's operations had not been sufficiently evaluated since its inception in 1962, and it became necessary to develop new administrative and case management techniques to handle a workload that was growing in both volume and complexity.

Moreover, the 1987 Throne Speech recognized the need for increased resources, as well as for the revitalization and renewal of the Commission. Rising expectations and aspirations of minorities, women and persons with disabilities, together with changing demographics, have created greater demands for stronger human rights protections.

To this end, increased resources have been allocated to the Commission, enabling the establishment of new programs in systemic discrimination, policy development and research, and public education and communications. During fiscal year 1989/90, new initiatives will be proposed to increase the scope and efficiency of complaint resolution following a comprehensive review of procedures that was launched in 1988. These initiatives are described in detail later in this report.

In carrying out his new responsibilities, the Chief Commissioner has held numerous meetings and consultations with employees, business and industry, trade unions, community and advocacy organizations, religious groups and others, in addition to meeting with members of the Commission's staff and local community groups in the regions. Mr. Anand has addressed and participated in conferences, seminars and community meetings as an advocate of and educator in human rights. Primary among the positions he has advanced in these forums is the need for legislation requiring the full implementation of employment equity to eliminate systemic barriers in both the public and private sectors.

He has also addressed the damage to work-force productivity that is caused by the discriminatory practices of many employers and by their lack of sensitivity to workplace harassment of racial minorities, women and persons with disabilities. Ultimately, discrimination has far-reaching economic consequences for business, industry and the community as a whole.

Guidelines for applying the provisions of the *Code* relating to discrimination in the form of racial slurs, jokes and harassment were prepared by the Commission during the 1988/89 fiscal year.

In 1987, amendments were proclaimed to Sections 10, 16 and 23 of the *Code* regarding the accommodation of persons with disabilities, among other groups. The *Code* now requires that the special needs of every group covered by the *Code*

must be accommodated unless to do so would create undue hardship. Following extensive community consultation, during the 1988/89 fiscal year, the Commission prepared guidelines for the interpretation and application of these new provisions as they relate to handicap.

In addition, the Commission made written submissions to a number of bodies on subjects with implications for human rights in Ontario. Our presentation to the Task Force on Access to the Professions and Trades in Ontario cited the barriers to accreditation that are encountered by foreign-trained professionals and tradespeople. In the submission to the Select Committee on Constitutional Reform concerning the Meech Lake Constitutional Accord, the Commission addressed the effect of the Accord on equality rights under the Canadian Charter of Rights and Freedoms.

The Commission appeared before the Race Relations and Policing Task Force and recommended a number of strategies to improve the relations between racial minorities and the police, in an effort to ensure that the freedom and dignity of all individuals be protected and preserved. In its submission to the Senate Standing Committee on Legal and Constitutional Affairs, the Commission addressed the spirit and intent of the proposed legislation on the refugee determination process, and spoke of its probable impact on inter-group relations in Ontario.

When amendments to the Ontario Automobile Insurance Board Act (Bill 2) were introduced, the Commission made a submission to the Standing Committee on the Administration of Justice, supporting non-discriminatory methods for assessing auto insurance premiums. Bill 2 became law early in 1989, and provides for the elimination of age, sex and marital status from the system used to classify auto insurance risk exposure. The new Act affects over 200 insurance companies that write auto insurance. By narrowing the exemptions to the *Code* and by focusing solely on risk-related factors in the determination of automobile insurance premiums, the public policy proclaimed in the *Code* to protect the right of all persons to be judged on their own merits rather than on generalities, is ensured.

The Commission also made representation to a legislative committee regarding proposed amendments to the Workers' Compensation Act (Bill 162). The committee was apprised of jurisdictional overlap between the *Code* and Bill 162, and recommendations were made to resolve this problem. Among them was that access to rehabilitation programs should be governed exclusively by individual capacity with no consideration given to the age of the claimant.

In fulfilling the Commission's role as a member of the broader human rights community, Mr. Anand, several commissioners and members of staff participated in the 1988 conferences of the Canadian Association of Statutory Human Rights Agencies (CASHRA) and the International Association of Official Human Rights Agencies (IAOHRA). It is evident that these forums for national and international co-operation serve to increase the profile and influence of Ontario human rights initiatives as well as to lend an external perspective to the issues and problems dealt with under Ontario's *Human Rights Code.*

The resolutions proposed by the Commission at the CASHRA conference included a nation-wide prohibition on drug testing in the workplace unless impairment from drug use would endanger workers or the public; an insertion in the Meech Lake Accord to make it clear that nothing in the document is intended to affect the Charter of Rights and Freedoms; and an amendment to the CASHRA constitution allowing representatives of community groups and the media to attend the CASHRA conference sessions. The first two resolutions were adopted and the third was defeated.

With respect to Ontario's participation in IAOHRA, the Commission, together with several other commissions in Canada, is working toward a more prominent role for Canadian members in the 1989 and future annual conferences, to ensure a truly international scope for the organization.

FINANCE AND ADMINISTRATION UNIT

William A. Sharp, Director

This new unit is responsible for developing appropriate relationships with those areas of government that deal with all financial and administration functions, including human resources and information systems. Chief among the Unit's priorities during the past fiscal year was the formalization of the Commission's resourcing needs as they relate to its revitalization plan. These resources recognized the special needs of the Commission to operate at arm's length from Government, while permitting an appropriate level of administrative support to ensure the most efficient and effective use of public funds.

A major initiative for fiscal year 1989/90 will be the establishment of a strategic systems plan. A study will be carried out to determine the extent to which the Commission's programmes can be systematized, and through which an assessment of its technological needs can be made. The Commission plans to introduce a system of linkages among all its offices in order to provide a data analysis capability to the new program areas.

The Commission also plans to automate reports on the status of complaints and to set up an "early warning system" to alert managers to emerging issues and problems.

POLICY DEVELOPMENT AND RESEARCH UNIT

Tanja Wacyk, Director

A major initiative late in fiscal year 1988/89 was the establishment of a new Unit with responsibilities for co-ordinating and conducting policy development and research. As an agency whose mandate is concerned with an increasingly complex area of public policy, it is essential that the Commission have the capability to formulate policies and guidelines within a consistent framework and according to an overall strategy that relates to all of its programs.

The Unit provides policy and research support to the whole Commission, working closely with the other program areas such as systemic investigations, compliance and legal services. When developing guidelines or policy statements concerning the application of the *Code* to areas of community interest, the Unit undertakes consultations with appropriate constituencies such as business and industry, trade unions and consumers' or advocacy organizations to ensure that their views and experience are considered and reflected.

Following the 1987 Proclamation of the amendments to the *Code* requiring accommodation of persons with disabilities, the Unit undertook the development of guidelines for

the interpretation of the new provisions. Approximately 30 advocacy organizations, employers, unions, landlords and representatives of the transportation industry responded to published notices requesting submissions on the subject. Following completion of the research, and prior to finalizing the guidelines, the Chief Commissioner hosted several meetings with community representatives to discuss their submissions and to answer questions regarding the draft guidelines. The final version will be released in 1989.

Also in the area of disability, the Commission will soon release guidelines regarding disability-related absenteeism in the workplace. While employers have the right to expect reliable job performance from their employees, employment-related sanctions imposed because of absences resulting from a disability may, in some circumstances, constitute a violation of the *Code*. The new policy will assist employers, workers and unions to understand the provisions of the *Code* relating to such absences.

Also near completion are guidelines relating to the Commission's interpretation of the provisions of the *Code* relating to racial slurs, harassment, and racial jokes. In preparing the guidelines, the Commission consulted community advocates, organizations, and agencies as well as employers, unions, business, and industry. It is anticipated that similar guidelines addressing the area of comments and conduct related to gender will soon follow.

Section 28(e) of the *Code* mandates the Commission "... to examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of (the *Code*)." Among the statutory reviews undertaken by the Commission during the fiscal year was the review of the proposed amendments to the Workers' Compensation Act (Bill 162). The Union of Injured Workers, the Ontario Federation of Labour, the Employers' Council on Workers' Compensation and the Injured Workers' Consultants were among the organizations that provided input into this review, and the resulting brief was submitted to the Legislative Committee in March.

Among other things, Bill 162 would provide a limited right to reinstatement for certain injured workers. It also substantially alters the benefit system and moves away from lifetime pensions to a new dual award system comprised of a lump sum for non-economic loss and a wage-loss supplement based on an estimate of loss of earning capacity rather than on the nature of the injury.

With respect to the reinstatement provisions, the Commission commented that substantial jurisdictional and administrative overlap is created between the Workers' Compensation Board and the Commission with respect to the duty of the employers to accommodate the needs of workers with disabilities. Moreover, since the *Code* has primacy over Bill 162, and provides much broader and more flexible remedies than those in Bill 162, injured workers, including the small minority specifically covered by Bill 162, normally bring their complaints to the Commission.

To resolve the issue of jurisdictional overlap and ensure an effective public policy response to the urgent need to promote the reintegration of injured workers into the workplace, the Commission recommended that the enforcement of any new or explicit reinstatement right be integrated into the current responsibilities of the Commission with regard to the accommodation of injured workers and that sufficient resources be allocated to support this expanded role.

With respect to the new benefit structure, the Commission raised concerns about the age restrictions affecting the amount of an award for non-economic loss, and the mandatory cut-off of benefits at age 65. It also recommended that access to rehabilitation programs should be governed exclusively by individual capacity with no consideration given to the age of the injured worker.

As a component of the 1988/89 review of its internal procedures, it was decided that the Commission will no longer review and decide requests for exemptions from the

Code as there are no provisions within the *Code* giving the Commission the power to do so. Section 23 of the *Code* does provide, however, that in some instances, persons can be dealt with differently within an employment situation because of their sex, age, marital status, race, or other grounds under the *Code*. Differential treatment is permissible in circumstances where a specific characteristic is necessary for the satisfactory performance of a job.

As a replacement for the "exemption process" and to assist the community in determining their respective rights and responsibilities, guidelines for the interpretation and application of Subsections 23(1) and (2) of the *Code* are currently being prepared, and will be released during the coming year. Some 100 employers' organizations, community groups and classified advertising managers were asked for their views during the preparation of this document.

As part of the Commission's mandate to assist employers in ensuring compliance with the provisions of the *Code* within their workplaces, the Unit is inquiring into procedures that have been developed by employers for dealing internally with human rights complaints. This is a project to determine the appropriateness and viability of various internal complaint resolution processes. Many employers have established such mechanisms to deal with possible *Code* violations as they arise, in lieu of or in addition to formal complaints to the Commission. The Commission is consulting with employers, unions and advocacy groups to determine their experience with internal complaint procedures.

HIV/HIV-related illness such as AIDS fall within the definition of handicap set out in the *Code*. In addition to resolving complaints, the Commission has undertaken policy development and research in respect of discrimination against persons with AIDS. A background study on this issue is now being prepared for use by human rights professionals, community groups and agencies, and will be released in 1989. The Policy Development and Research Unit is working with the public and private sectors to assist them in the design of policies dealing with AIDS in the areas of both employment and services.

COMPLIANCE UNIT

Marty Schreiter, Director

The Compliance Unit commands the most significant portion of the human and financial resources of the Commission. This Unit is the operational core of the organization, responsible for carrying out the Commission's primary function of investigating and resolving complaints.

The Compliance Unit promotes the public policy of Ontario which recognizes that the dignity and worth of every individual in the province must be protected and that equal opportunity should be provided to all persons withoutdiscrimination based on race, ancestry, place of origin, ethnic origin, colour, citizenship, handicap, creed, age, sex, sexual orientation, family status, marital status, record of offences, and the receipt of public assistance.

Currently, seven regions comprising 15 district offices across the province report to the Director of Compliance. Plans for an eighth regional office in the Downsview/Rexdale area have been finalized and this office is expected to be in operation in the near future. Similarly, an office to serve the Northwestern area of Ontario will be opened shortly.

The major concern facing this Unit is an extremely large caseload. The commitment of additional resources should see a reduction of the case backlog and a substantial shortening of the time period presently required for case handling. The Commission's goal is to develop methods for dealing with the immense volume of case work to achieve quick, effective resolutions.

The Commission received over 70,000 inquiries province-wide in the last year. Almost 2,000 cases were dealt with and the Commission was able to recover $1.4 million for complainants. During the period of April 1, 1988 to March 31, 1989, the Commission received 1,734 formal complaints. Over this period, 1,345 were closed with 1,009 settled, 161 dismissed by the Commission due either to lack of jurisdiction or lack of evidence to support the complaint, 33 were refused under Section 33 and 142 were withdrawn by the complainants.

There were some outstanding settlements as well. *The Human Rights Commission v. The Peel Board of Education* was an extremely important settlement with pay equity and employment equity implications. The *Buxton, Lee, MacArthur, Spanks and Moledina v. Majestic Electronics Stores, Inc. and Ramsauer* complaint represents a landmark settlement reached on racial discrimination and harassment involving the payment of close to $300,000 in damages. Both cases are described in the chapter on Examples of Complaints of Discrimination in this report.

The Regions

The Commission administers seven regional offices each headed by a Manager and staffed by professionals in the field of human rights. Distinct geographical boundaries separate the regions and, except in rare instances, individual regions manage their own caseload. Commission staff maintain an awareness of and sensitivity to the uniqueness of each region's demographic composition and how it impacts on human rights issues.

The seven regions are comprised of fifteen district offices. A breakdown of the respective regions and the districts which they administer as well as the names of staff members in each office can be found at the end of this report.

SYSTEMIC INVESTIGATION UNIT

Anita Dahlin, Director

In January 1989 the Commission created its first Systemic Investigation Unit marking a significant new enforcement direction for the Commission.

Resources are being committed to identifying and rectifying underrepresentation of target groups, and to the dismantling of systemic barriers to equal opportunity in the province. The powers of the Commission to initiate complaints will be employed to obtain special program remedies such as employment equity and education equity while numerical requirements will be utilized to resolve complaints. As a result, the Commission expects to make a heavier impact on the eradication of systemic discrimination.

The Systemic Investigation Unit will be targeting particular areas and practices for investigation but, as well, will be supporting staff in the field where systemic issues may be identified as part of an individual complaint.

Areas of expertise to be developed, as staffing proceeds in the new fiscal year include:

- data analysis and labour market economics, involving statistical expertise to assist staff in using numerical data to investigate discrimination and institute appropriate remedies;
- expertise in human resources and industrial systems and employment equity, to assist staff and the public in the development and analysis of systems review or equity programs;
- a team of well-trained investigators to plan and carry out investigations that will develop strong case precedents;
- expertise in issues relating to the ground of handicap where many systemic barriers prevent full participation in society by persons with disabilities. To facilitate this objective, the Unit for the Handicapped is now a part of the Systemic Unit. The report of this Unit's activities is found below.

Unit for the Handicapped

The Unit for the Handicapped performs a specialist and consultative role both internally and externally. The Unit continues to handle both systemic and complex complaints and issues relating to discrimination because of handicap.

The volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 40% percent of all complaints filed during 1988/89. Of these, 34% were on the ground of physical handicap, 4% were on the ground of mental handicap, and 2% related to claims under the Workers' Compensation Act. A breakdown of the types of handicaps is shown in the statisitical section of this report.

This is the sixth year of implementation of the *Code* provisions relating to handicap. In April 1988, the amendments to Sections 10 and

16 of the *Code* which deal with accommodation were proclaimed. Consequently, the emphasis has been on accommodation of persons with disabilities in all of the areas specified by the *Code*. A process to educate employers, service providers, landlords, and labour unions regarding their obligation to accommodate persons with disabilities short of undue hardship has been a priority this year.

AIDS as an illness received prominence because of landmark settlements on complaints alleging discrimination because of handicap in the area of employment and services.

Equal access to transportation for persons with disabilities, access to facilities, the rights to equal education and integration of students with disabilities have emerged as important issues requiring intensive staff involvement during this year.

Despite ongoing public education with employers about recruitment and screening instruments, the main barriers to the employment of individuals with disabilities continue to be employment medicals, strength tests, and physical standards which are not in keeping with the demands of the job. The Commission consulted with a number of employers including heavy industry, the automotive industry, the aircraft industry and hospitals on the issue of employment medicals. In addition, the Commission was involved in the issues of physical demands analyses and functional capacity assessments to accommodate persons with disabilities in employment.

As well, the Commission, and the Unit in particular, continue to address such issues as access to facilities, the right to an equal education for students with disabilities and issues involving insurance and AIDS.

Another major project of the Unit for this year was the review of employer policies on AIDS in the workplace, both in the private and public sectors.

Public Education

The Unit remains dedicated to its role of educating the public about the legislative rights of persons with disabilities. Since this year marked the Proclamation of amendments to the *Code*, including Section 16, the Unit has been actively involved in informing the public of how access and accommodation provisions are related to the various social areas under the *Code*: services, accommodation, contracts, employment and vocational associations.

COMMUNICATIONS AND EDUCATION UNIT

Alan Shefman, Director

Advocacy and the prevention of discrimination over the long term can only be achieved with a strong educational and public relations program. As part of the Commission's commitment to addressing discrimination in the province, a Communications and Education Unit was established this year. Its primary goal is to communicate to the media and to Ontario communities the policies and practices of the Commission as well as the legal rights and responsibilities contained within the *Code*.

The Unit will provide specialized support to Commissioners and staff by undertaking research, developing models and educational materials, and co-ordinating program delivery.

The Unit will consult on a regular basis with constituent groups - business and industry, unions, government agencies, religious institutions, schools, the media, community groups, and concerned individuals, so that Commission policies and practices will gain important external input and wide distribution.

In utilizing community resources through joint participation in workshops, seminars, conferences, and advisory committees, the Commission will maintain a sensitivity to current issues and concerns ensuring appropriate responses to the human rights needs of the province. Efforts in this respect have already been achieved through the joint participation with the Coalition for Lesbian and Gay Rights in Ontario in the development of a training seminar for Commission staff addressing the ground of sexual orientation.

The Unit will continue publicizing significant settlements and the principles which they embody to foster a greater public understanding of and a sensitivity to human rights issues.

The Unit will also develop both short and long term strategies to broaden the scope and to extend the reach of its educational function. Some of these strategies include:

- ☐ development of educational and training models and material for internal and external use;
- ☐ establishment of an Information Access System for internal and external use;
- ☐ establishment of a Resource Centre for internal and external use;
- ☐ preparation of all Commission publications and resources for full accessibility by the public;
- ☐ publication and dissemination of Commission guidelines and policies on such issues as accommodation, racial harassment, sexual harassment, and sexual orientation; and
- ☐ development of a province-wide media strategy to ensure appropriate coverage of issues that impact on our client groups.

Through this multi-faceted approach to communications and education, the Unit will play a crucial role in the Commission's proactive approach to maximizing equality of rights and opportunities for all people in Ontario.

LEGAL SERVICES UNIT

Anne M. Molloy, Director

A Legal Services Unit that operates independent of the Ministry of the Attorney-General was created during the past year to assist Commission staff and members of the Commission itself by providing a variety of legal services.

Working with officers and regional managers, members of the Unit provide legal advice to assist in the processes of investigation and conciliation. A substantial amount of time is spent providing legal opinions on complaints going before the Commission including all cases in which the appointment of a Board of Inquiry is sought. Members of the Unit attend Commission meetings to provide legal advice as required on decisions made by the Commission.

Once a Board of Inquiry is appointed, members of the Unit act as counsel to the Commission before such boards as well as before the courts on matters of judicial review and on appeals.

Several important decisions in the area of human rights law were issued by Canadian courts during the past year.

An overview of several cases in which significant settlements were reached, along with brief descriptions of the most important of those cases dealing not only with Boards of Inquiry, Appeals and Judicial Reviews, but also judgements issued in other jurisdictions, may be found elsewhere in this report.

EXAMPLES OF CASE SETTLEMENTS 1988/89

EMPLOYMENT

Sex

OHRC v. Peel Board of Education and CUPE [Locals 2544/2703]

As a result of information made available to the Commission, the Commission initiated complaints of discrimination in employment on the basis of sex against the Canadian Union of Public Employees, Locals 2544 and 2703, and the Peel Board of Education. Local 2544 was exclusively male until last year, and is still predominantly male. Local 2703 is entirely female.

The complaints alleged that the employment policies and practices regarding recruitment and promotion that had been negotiated as part of the collective agreement between the Union and the Board resulted in superior terms and conditions of employment for the full-time attendants (predominantly male) when compared to the part-time, female cleaners.

These terms and conditions encompassed wages, benefits, sick leave, equal access through job posting, seniority protection, job security and grievance procedures.

In settlement of the complaints, Locals 2703 and 2544 agreed to merge under one collective agreement as of June 30, 1989. The agreement also provided for the following:

- ☐ dovetailing of seniority lists for both locals, with seniority based on date of original hiring;
- ☐ a 12-month work year for all employees (the female cleaners had been restricted to a 10-month work year);
- ☐ an Equal Opportunity Agreement between the Board and the Commission allowing for the removal of job ghettoization and enhanced upward mobility for women through revised job classifications. This agreement constitutes a special program under the *Code*.;
- ☐ a special training program to facilitate the mobility of the female employees;
- ☐ an immediate and retroactive pay increase of 50 per cent for the cleaners, now classified as "part-time school attendants", which is the new entry level position for all employees of both sexes. The rate of pay will be 81 per cent of the next classification ("assistant custodians"), a substantial increase over the existing per rate;
- ☐ an agreement to audit employment practices of the Board for a two-year period.

This agreement is being administered over a four-year period at a cost of between $4 million and $6 million.

Sex

OHRC and Metropolitan Stores Ltd.

A complaint initiated by the Commission alleged that Metropolitan Stores Ltd. discriminated against women in senior levels of management. External advertising for managerial positions and the policies, practices and procedures of the company allegedly led to a disproportionately large number of males being hired. Further, the Commission alleged that the company's internal selection system suggested that only females must prove themselves in lesser positions prior to being considered for the Trainee Manager Programme.

Following investigation and conciliation, a settlement was agreed upon, which emphasized the company's commitment to the promotion of employment equity in the workplace through the implementation of a special program designed to increase the number of women in managerial positions and to extend management opportunities to internal candidates.

A two-year applicant flow monitoring system was agreed upon, to be co-ordinated internally, in order to assess the company's progress towards achieving employment equity. A summary of results would be provided to the Commission every six months.

In addition, Metropolitan Stores agreed to develop a written human rights policy, to be inserted in the personnel manual and posted in the office or staff room of all Ontario stores.

Sex

Dunn and Amstel Brewery Canada Limited

A Board of Inquiry was appointed to decide a complaint alleging a breach of settlement filed by Phyllis Dunn against Amstel Brewery Canada Limited.

The complainant originally filed a complaint of sex discrimination against the company in 1984. The parties arrived at a settlement the following year which was approved by the Commission. As part of this settlement, it was agreed that the complainant would be offered employment as a bargaining unit employee.

Ms. Dunn was hired as a seasonal employee in 1986 for the summer and was laid off in August. She alleged that she should have been hired as a bargaining unit employee with full recall rights.

Prior to the hearing, the parties reached a settlement of the matter on the following basis:

- the respondent would pay the complainant the sum of $10,000 as a general settlement;
- the complainant was formally hired and her name was placed on the seniority list for the respondent's bargaining unit with a seniority date of September 16, 1986 and was accorded all of the rights and benefits provided by the collective agreement to which she would have been subject as of that date, and by any and all subsequent collective agreements.

The respondent further agreed to establish a special program to increase the employment of women.

Sexual Harassment

The complainant, who was employed as a receptionist and account co-ordinator by the respondent advertising agency for 13 months, alleged that throughout her employment she was subjected to persistent unwelcomed sexual comments, questions about her sexual experiences and lewd suggestions about her conduct. She claimed that the environment had become so hostile that her continued employment was untenable and she resigned.

In settlement of the complaint following an investigation, the complainant was given $400 representing lost wages and $1,100 in compensation for mental distress. In addition, she received a letter of reference and a policy against sexual harassment was circulated among the employees of the firm.

Handicap
Hopkins and Swire Enterprises Ltd.

The complainant, who has epilepsy, alleged that she had been working as an assistant manager trainee for the respondent for several weeks when she required a 10 minute rest break because she was afraid that a seizure was coming on. In her complaint, she claimed that her employment was terminated as soon as her employer learned about the incident.

During the investigation, the employer claimed that he had dismissed the complainant out of a concern for her safety, in that she was employed by a restaurant and worked in the vicinity of hot food and cooking oil. The respondent also indicated that Ms. Hopkins had taken time off due to illness. The investigation revealed that the respondent had not made efforts to accommodate the complainant's disability nor respected her desire to continue in her job despite the existence of some risk to her safety.

In conciliation, the following terms of settlement were agreed to among the parties:

- ☐ the respondents would pay to the complainant, as damages for lost income and for mental anguish, the amount of $3,000;
- ☐ the respondents would provide the Commission with a letter of assurance that their practices conform to and do not infringe the rights guaranteed under the *Code*;
- ☐ the respondents would post in a conspicuous location in each of their four places of business the Commission's Declaration of Management Policy cards;
- ☐ the respondents would facilitate the scheduling of a seminar or seminars conducted by the Commission for all management employees to address the provisions and principles of the *Code*;
- ☐ the respondents, in making this settlement, are not deemed to have admitted liability.

Handicap
Clarke v. The Ontario Provincial Police

Mr. Clarke, an OPP Officer, was granted unconditional reinstatement into his former position as probationary constable in settlement of his complaint alleging discrimination in employment on the basis of perceived handicap. The investigation indicated that after completing the recruitment process, including a three-week orientation course, Mr. Clarke had a seizure at the graduation ceremony. A few weeks later, he was fired because he was suspected of having epilepsy.

The Commission requested the appointment of a Board of Inquiry to hear the complaint. Following several days of hearing, a settlement was reached. In addition to reinstatement, Mr. Clarke received $28,000 which is equivalent to approximately one year's salary. Upon completing his probationary period, he was credited with one additional year's seniority.

Handicap
Lentz v. The Toronto Hospital (Toronto Western Hospital)

Mr. Lentz alleged that he was hired by the Toronto Western Hospital on January 4, 1988 and was fired 19 days later because he had AIDS. The investigation revealed that he had been terminated because of his disability. A Board of Inquiry was appointed into the complaint, but a settlement was reached prior to the hearing. Under this settlement, Mr. Lentz was returned as a nurse to the Toronto Western Hospital and received full back pay and benefits as well as restoration of his seniority and a large contribution to his legal fees.

Race, Colour, Handicap and Racial Harassment
Khan and H. & O. Centerless Grinding, Ladouceur

Mr. Khan, an East Indian of Guyanese origin, began working as assistant to the Supervisor of Maintenance for the respondent company in 1973. In 1981, Mr. Ladouceur was appointed as the new supervisor in that department. Several years later, Mr. Khan requested Mr. Ladouceur's assistance in lubricating the machinery because he had a back problem. He alleged that Mr. Ladouceur refused, saying that "lubricating is a nigger's job", and threatened him with assault. He further alleged that management took no action with respect to the racial slur, and terminated his employment for not doing his job. His complaint alleged discrimination in employment because of race, colour and handicap, as well as racial harassment.

These allegations were supported by the investigation findings. The complainant had been hospitalized because of a back problem prior to the annual task of lubricating the machinery, but no effort was made to accommodate his disability. The individual respondent admitted the racial slur.

In settlement of the complaint, the corporate respondent agreed to:

- ☐ pay to the complainant $8,000 (less statutory withholdings) in compensation for lost wages and $2,000 in general damages;
- ☐ forward to all employees, in their pay envelopes, its policy statement against racial name calling and derogatory comments;
- ☐ hold human rights seminars for its management, middle management and lead-head staff;
- ☐ assure the Commission of its continued support of the *Code*;
- ☐ in addition, the individual respondent wrote the complainant a letter of apology for his remarks.

This settlement was made without any admission of liability on the part of the respondents.

Race, Colour, Sex, Ancestry, Place of Origin, Ethnic Origin; Reprisal; and Harassment because of Association
Buxton, Lee, MacArthur, Spanks and Moledina v. Majestic Electronics Stores, Inc. and Ramsauer

Five complainants alleged widespread discriminatory practices at Majestic Electronics Stores, and that their right to equal treatment in employment was infringed, contrary to the *Code*.

Ms. Moledina, an East Indian, terminated her employment with the company after she discovered that she was to be fired because of her race and colour.

The complainants alleged that Mr. Ramsauer made racially offensive comments and directed company managers not to hire women and minorities. The male complainants, who held positions which entailed hiring and firing, alleged that they were threatened with termination and reprisal for refusing to discriminate against other employees because of race, colour, sex, ancestry, place of origin and ethnic origin. In addition, they claimed that their right to freedom from discrimination and harassment in employment was infringed because of their relationship, association and dealings with persons identified by the above-mentioned grounds.

A Board of Inquiry was appointed; however, a settlement was reached prior to the hearing. Among its terms were the following:

- ☐ letters of apology;
- ☐ total financial compensation for specific damages to the five complainants of $253,796;
- ☐ $8,000 in general damages, to be paid personally by Mr. Ramsauer to each of the complainants;

the guarantee that Majestic will hire women and minorities in direct proportion to the percentage of applications from these groups to the total number of applications received;

- ☐ the holding of two educational programs at the company per year by a member of the staff of the Ontario Human Rights Commission for the next three years. Mr. Ramsauer must attend each of these sessions;
- ☐ the statement, in any advertisement for employment by the company, that, "Majestic Electronics Stores is an Equal Opportunity Employer";
- ☐ the insertion, on a one-to-one basis, of employment advertisements in established newspapers representing visible minority groups along with those in daily newspapers;
- ☐ the inclusion of women and minorities in any advertisement which portrays Majestic employees;
- ☐ the hiring of an "Employment Equity Co-ordinator" for a three-year period; and
- ☐ the gathering of extensive statistics on Majestic's workforce to be submitted to the Human Rights Commission.

GOODS, SERVICES AND FACILITIES

Handicap
Mary McLaughlin and Niagara Falls Union Centre and London Life Insurance Co.

The complainant was employed by the Niagara Falls Union Centre. Since September 1986, she was denied group insurance coverage, which was provided by London Life. The complainant had angina, which the insurer deemed a bad risk. The complainant contended that her angina was controlled by medication and did not render her a substantial risk.

The respondent insurer denied a breach of the *Code*, claiming that its actions were reasonable and *bona fide* under Section 21 of the *Code*. Originally, the insurer and the respondent employer had a policy insuring 10 people, but under a new contract, this number was reduced. Citing Brackenridge's *Medical Selection of Life Risks*, which pointed out that heart disease was still the leading cause of death, the respondent insurer reiterated its claim that her angina made the complainant a bad risk.

The parties agreed to a settlement in which the complainant was provided with retroactive coverage on the same terms as the insurer's group policy. The respondent insurer agreed to grant coverage starting from March 1988, while the complainant's employer agreed to pay retroactive premiums for the complainant up until March 1988, to compensate her for the time when she was not covered. For her part, the complainant acknowledged that her employer had provided her with medical coverage during an illness subsequent to her losing her coverage, and had actively sought to have her reinstated in their group insurance. In light of this, the complainant asked to withdraw her complaint against her employer.

Handicap
The Toronto Hospital

The Toronto Hospital agreed to institute a policy of infection control procedures and to expand the range of dental services offered to persons with AIDS or HIV, as settlement of a complaint filed by a person with AIDS who sought treatment at the Hospital's dental clinic. He alleged that he was informed by the hospital dentist that, in keeping with hospital policy on dental treatment for persons with AIDS, such persons would not be given permanent fillings or have their teeth polished because these procedures required high-speed instruments. These instruments produce a spray of blood and saliva, which was thought to pose a risk to the dentist and other patients. The complainant was further informed that certain non-essential and cosmetic procedures would not be performed on patients with AIDS or those who tested HIV positive.

The complainant alleged that the policy deprived him of his right to equal treatment with respect to services on the ground of handicap.

During its investigation, the Commission sought the advice of medical experts on the question of the danger posed to patients and health care professionals in the

dental setting by offering services to persons with AIDS. Resulting indications were negative, and revealed that the risk of transmission of the HIV virus was low.

Further research by the Commission, assisted by the AIDS Committee of Toronto, indicated that given the difficulty in identifying all current and potential carriers of the HIV virus, the most effective approach would be to adopt a "universal precautions" policy, under which all patients are assumed to be potentially infectious requiring precautions against infection to be taken by health care professionals. This is in keeping with current medical trends promoted by Health and Welfare Canada and the Centre for Disease Control in Atlanta, Georgia.

Following conciliation, the hospital advised the Commission that it was instituting a hospital-wide policy of universal body substance precautions. The hospital stopped limiting the range of dental services offered to persons with AIDS or HIV.

ACCOMMODATION

Handicap
AIDS Committee of Ottawa

The Commission approved a settlement between the AIDS Committee of Ottawa (ACO) and ar Ottawa landlord in resolution of a complaint of discrimination in accommodation on the basis of handicap, filed by an individual on behalf of the ACO.

The complaint alleged that the respondent landlord refused to rent office space to the organization due to the fact that its activities relate to AIDS and AIDS patients. The complaint also alleged that the landlord's position was based upon a request from tenants of the building that they not be forced to share space or washroom facilities with persons who have, or might have, AIDS. The landlord's offer to construct separate washroom facilities within the office was not acceptable to the complainants.

As a means of resolving the matter, the respondent, without admitting any liability or wrongdoing, agreed to pay $8,000 to the ACO, $1,000 to the individual complainant and issue an apology for insult to dignity.

DECISIONS OF BOARDS OF INQUIRY AND THE COURTS 1988/89

GOODS, SERVICES AND FACILITIES

Handicap
Tammy McLeod v. Youth Bowling Council of Ontario

In this case, the Board of Inquiry found that a rule enforced by the respondent which required that a bowling ball be delivered entirely by manual means, constituted constructive discrimination on the basis of handicap. Tammy McLeod, eleven years old at the time of the hearing, has cerebral palsy which has affected her motor power and co-ordination and her ability to speak. However, with the use of a simple wooden ramp, she is able to bowl regularly and compete successfully with her peers. In 1985, Tammy entered a bowling tournament but was ruled ineligible to compete because of her use of the ramp device. At the Board of Inquiry, the Commission introduced expert evidence which established that the ramp gave Tammy no competitive advantage and that even with the ramp, she was at an overall disadvantage in comparison with other children.

In its ruling, the board did not accept the respondent's contention that Tammy should be restricted to participating in competitions among persons with similar disabilities. The board found no evidence of an appropriate alternate league, but more importantly, stated that the segregation of children with disabilities is not the answer. Similarly, the board rejected the argument that the rule was reasonable and *bona fide* because Tammy does not really bowl in the true sense and her participation in the tournament would be harmful to the competition among the other children. The board held that the concept of competition, while essential to much sport, should not be used to bar access to differently-abled individuals. Persons with disabilities who need to alter the process of a sport should be given competitive opportunities where this does not result in an unfair advantage with respect to the outcome. Tammy was at a disadvantage in relation to other bowlers and therefore the outcome was not prejudiced.

The board ordered the respondents to allow Tammy to participate in competitive tournaments along with her peers and required them to develop a procedure allowing bowlers with disabilities to be exempt from general provisions prohibiting mechanical devices. In addition, Tammy was awarded $2,000 in compensation for mental anguish arising from the discrimination.

This decision has been appealed by the respondents.

Creed
Sehdev v. Bayview Glen Junior Schools

This decision confirmed that even in cases where the recent *Code* amendments relating to accommodation do not apply, a respondent must accommodate the religious practices of its employees short of undue hardship. The board held that by imposing an inflexible requirement that all students conform with a school uniform policy which precluded the wearing of visible articles of religion or long hair, the respondents had breached Sections 1 and 10 of the *Code*. The effect of the rule was to deny admission to the school on the basis of creed, and Section 17 of the *Code*, which allows special interest groups to further their particular interests, did not operate to absolve the respondents of responsibility for the discriminatory effect of the policy. The board also pointed out that the asserted philosophy of the school was to promote tolerance and respect for the religions of all peoples, and yet, by refusing to liberalize the dress code even slightly, the respondents were inadvertently and invidiously discriminating on the basis of creed. The board noted that Section 17 does not give a blanket exemption to private schools. Rather, the policy of the legislature in enacting this provision was to allow special interest groups to further their particular interest. Section 17 clearly allows a discriminatory policy to promote "sameness". However, the aspect of "sameness" must be positively stated, identifying a badge of entry related to a prohibited ground of discrimination. A small modification of the uniform policy for students like the complainant who, as a practising Sikh, wore a turban would not, in the opinion of the board, in any way compromise the school's objectives.

Race and Colour
Sheperd v. Bama Artisans

The application of Section 11 of the Charter was a significant factor in this case. The board rejected all thre of the delay-based preliminary objections raised by counsel for the respondents and upheld the allegations of discrimination because of race and colour. One of these objections was based on Section 11(b) of the Charter which guarantees every person who is charged with an offence the right to trial within a reasonable time. Citing the long line of decisions that have helc that proceedings before Boards of Inquiry are purely civil and compen satory in nature, the board rejected outright the proposition that a respondent to a complaint could be said to be "charged with an offence

EMPLOYMENT

Handicap
Belliveau v. Steel Company of Canada

This decision involved a detailed analysis of the onus that the *Code* places on an employer who refuses to hire or continue to employ a person with a disability. The board ruled that an honest belief that a person is incapable of performing the essential duties of a job is not sufficient to meet the *Code*'s requirements. In addition, the employer must objectively establish that a reasonable person in the position of the employer would conclude that the worker with a disability was incapable of doing the job. Further, such incapacity will not be established unless the employer shows that accommodation of the needs of the employee is either not possible at all, or is not possible without undue hardship.

The board also held that the *Code* places squarely on employers an obligation to make inquiries that will assist them to provide accommodation. Persons with disabilities also bear some responsibility to make available all relevant information. However, even in this case, where the complainant's "own negligence in not clarifying quickly his medical status" made him "primarily responsible" for the respondent's refusal to reinstate him, the board held that the respondent had failed to meet the burden imposed by the *Code*. Despite the board's ruling that Stelco had reasonable grounds for thinking that the complainant was medically unfit, a damage award was made.

Sexual Harassment
Hall v. Sonap Canada and Torimiro

The board upheld a claim of sexual harassment by the complainant who was one of several young women placed at the respondent's business as part of a publicly funded job training program. The board found that by comments on the appearance and personal lives of his employees, and by a course of conduct that involved touching them, taking them out alone for lunch and for rides in his car, the personal respondent had created an environment which put his young employees at a grave disadvantage by making them uncomfortable and putting them under serious pressure.

The board noted that the respondent had a special responsibility to his young trainees and that, as a man of experience and sophistication, must have known the nature of the environment he was creating. In addition to special damages, an award of general damages of $1,500 was made as recognition that employers and their agents have a special responsibility to their employees, for it is they who define the work experience and create the work environment. The board stated that, in rendering their services, employees have the right to be treated decently and not to be exposed to pressures which have nothing to do with the performance of their labours and instead relate to their gender.

Religious Harassment
Dufour, Charron and Demers v. J. Roger Deschamps Comptable Agree and Deschamps

The board upheld two of three complaints of religious harassment, and characterized harassing or discriminating against someone because of religion as a "severe affront to that person's dignity" and "a denial of the equal respect that is essential to a liberal democratic society." Even though the respondents did not overtly require their employees to conform to their religious practices, the pervasive religious atmosphere which existed in their workplace was sufficient to breach the *Code*.

The board rejected the argument that an employer could exculpate himself or herself by alleging that his or her comments were merely moral in nature. It would frustrate the protective purpose of Section 4(2) of the *Code* to allow an employer to press what are really religious values on his or her employees under the pretext that it was only morality. By virtue of the economic power most employers have over their employees, they must scrupulously avoid

taking advantage of the employment relationship to put unwelcome pressure on any employee. Because of this unequal relationship, it is not necessary that a worker inform his or her employer that such comments or conduct are not appreciated in order for the protection of the *Code* to be extended to that individual. If a complainant's co-workers have done or said something to give the employer reasonably clear clues that such behaviour is unwelcome, that ought to be sufficient. Consequently, once a complainant has established that this has occurred, the evidentiary burden of showing that the complainant in effect invited the behaviour complained of, will shift to the employer.

In addition to the ruling with respect to Section 4 of the *Code*, the board discussed the function of the costs award provision in Section 40(6) of the *Code*, and noted that an award of costs against the Commission under that section will be granted only in very unusual cases. Here, where the evidence showed no negligence or impropriety on the part of the Commission in the investigation and pursuit of the complaints, a cost award was inappropriate.

ACCOMMODATION

Age

Cryderman v. York Condominium Corporation

An interim decision of the Board of Inquiry in this case dealt with two important issues.

Firstly, one of the complainants alleged that Section 9(a) of the *Code* is contrary to the equality rights guaranteed by Section 15 of the Charter. The respondents argued that the board did not have the jurisdiction to make a finding that a provision of the *Code* is contrary to the Charter. The board held that it does have such jurisdiction under Section 52(1) of the Charter, since a body charged with determining rights has a duty to make its decision within the ambit of the constitutional protection of those rights. In addition, there are practical reasons why a Board of Inquiry should have the power to apply the Charter. Specifically, it prevents the splitting of issues and the duplication of evidence which would otherwise result. The board also considered it appropriate for a specialized human rights tribunal to deal with the Charter matter in the first instance in the context of all of the facts of the case. Although it was not necessary, the board took the view that a Board of Inquiry is a "court of competent jurisdiction" within the meaning of Section 24(1) of the Charter.

The second issue was whether the directors of the respondent condominium corporations could be named as individual respondents. The board held that a complaint can name, as individual respondents, the directors and officers who caused the corporate entity to take the action that is alleged to offend the *Code*. The board also noted that a "board of directors" cannot be named as a respondent as it is not, in itself, a legal entity or "person" within the meaning of Section 45(c) of the *Code*.

CASES OF RELEVANCE TO HUMAN RIGHTS ISSUES

EMPLOYMENT

Marital Status
Cashin v. C.B.C.

Ms. Cashin, a writer/radio broadcaster for the Canadian Broadcasting Corporation in Newfoundland, lost her job because her husband, a prominent public figure in the province, had been appointed to the Board of Directors of Petro Canada. As a result, Ms. Cashin alleged discrimination with respect to employment on the basis of marital status in a complaint under the Canadian Human Rights Commission.

The C.B.C. argued that if there was discrimination, it was not because Ms. Cashin was married per se, but because of the identity of her husband. Also, any discrimination was justified, the C.B.C. claimed, because a perception of objectivity was a *bona fide* occupational requirement for broadcasters.

The Federal Court of Appeal indicated that the purpose of the Human Rights Act is to ensure that individuals are judged on their merits. There was evidence that the C.B.C.'s policy adversely affected women who used their husbands' surnames, and thus the policy discriminated on the basis of an aspect of marital status.

With respect to the bona fide occupational requirement defence advanced by the C.B.C., the court held that the test for establishing the requirement contains both subjective and objective components. In this case, the C.B.C. did not establish anything more than its impression that audiences might perceive a lack of objectivity on the part of Ms. Cashin. Under the City of Etobicoke test, such impressionistic evidence is not enough to satisfy the objective component of the *bona fide* occupational requirement.

GOODS, SERVICES AND FACILITIES

Marital Status and Family Status
Attorney-General of Canada v. Druken et al.

Ms. Druken, who was employed by her husband, was denied unemployment insurance benefits since the Unemployment Insurance Act and its regulation provided that persons employed by their spouses were ineligible for benefits.

Ms. Druken claimed discrimination with respect to services on the basis of marital status, contrary to the Canadian Human Rights Act.

The Canadian Human Rights Tribunal found the legislation to be discriminatory, and ordered the Canada Employment and Immigration Commission to cease applying the offensive provisions of the Act and regulations.

APPEALS

EMPLOYMENT

Age
McKinney v. University of Guelph

The Ontario Court of Appeal considered the issue of mandatory retirement with respect to teaching staff and librarians at Ontario universities.

The Court unanimously held that Section 9(a) of Ontario's *Human Rights Code*, which limits protection from discrimination on the basis of age to those between 18 and 65, is inconsistent with Section 15 of the Charter.

A majority of the Court held that Section 9(a) constitutes a reasonable limit on the Section 15 charter right which is demonstrably justified in a free and democratic society. Mr. Justice Blair dissented on this issue, finding that Section 9(a) of the *Code*, while inconsistent with Section 15 of the Charter, was not saved by Section 1 of the Charter.

This case has been appealed to the Supreme Court of Canada.

Creed
Roosma et al. v. Ford Motor Co. et al. (Interim Decision)

At the commencement of a hearing before a Board of Inquiry, the board made a number of rulings on preliminary objections raised by the respondents. The respondents appealed those rulings to the Divisional Court.

Upon motion by the Commission, the Divisional Court quashed the appeals. The court held that "a decision" which may be appealed under Section 41 of the *Code* must be a final decision of the Board of Inquiry. In so doing, the Court emphasized that enforcement of the *Code* requires expedition, which would be defeated by the ability to appeal interim rulings.

GOODS, SERVICES AND FACILITIES

Sex
Schachter v. Canada

Mr. Schachter, the natural father of a new baby, stayed home to care for his child and sought benefits under the Unemployment Insurance Act.

The Act provided maternity leave benefits to natural mothers and also provided parental leave to adoptive parents.

Mr. Schachter sought a declaration based on Section 15 of the Charter, that natural fathers are eligible to receive parental leave benefits.

Mr. Justice Strayer of the Federal Court of Canada, Trial Division, held that Mr. Schachter's right to equal benefit of the law was denied by the Act. The Court observed that the legislative scheme was based in part on sexual stereotyping of the respective roles of mothers and fathers, and, to that extent, discriminated on the basis of sex. The Court did not declare that the Act or any of its sections were of no force and effect, but instead found parental leave benefits on the same terms as were applicable to adoptive parents.

The Federal Court of Appeal, in examining the remedy ordered by the tribunal, found that a tribunal has express authority to order the cessation of a practice which has been found to be discriminatory. This allows a tribunal, when it finds that legislation mandates an unjustified discriminatory practice, to make an order preventing continuation of that practice.

VOCATIONAL ASSOCIATIONS

Citizenship
Andrews v. Law Society of British Columbia

Mr. Andrews, an applicant for admission to the Law Society of British Columbia, was not a Canadian citizen, but met all other requirements for admission. He was denied entry because he was not a Canadian citizen.

Mr. Andrews sought a declaration that the citizenship requirement violated Section 15 of the Charter. The Supreme Court of Canada held that the requirement was in violation of Section 15 of the Charter, and was not saved by Section 1. In so doing, the Court observed:

- discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape a charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed;
- the grounds of discrimination enumerated in Section 15(1) are not exhaustive. Grounds analogous to those enumerated are also covered and the Section may be even broader than that although it is not necessary to answer the question since in this case the ground advanced falls into the analogous category.

JUDICIAL REVIEW

VOCATIONAL ASSOCIATIONS

Sex
Federation of Women Teachers' Associations of Ontario

Two women teachers alleged that the union by-law of the Ontario Teachers' Federation which required them to join the women's union (FWTAO) as opposed to a men's union (the Ontario Public School Teachers' Federation) discriminated against them with respect to union membership on the basis of sex.

The Commission referred the case to a Board of Inquiry.

FWTAO sought judicial review of the Commission's decision. The Divisional Court dismissed the application by FWTAO and in doing so made the following observations:
1. A decision by the Ontario Human Rights Commission under Section 35 of the *Code* to request the appointment of a Board of Inquiry is an administrative decision, and not a quasi-judicial one. The court noted that no rights of any party have been determined in a decision to appoint a Board of Inquiry.
2. The duty of a statutory body when acting in an administrative capacity is to act fairly. The court went on to indicate that the duty to act fairly encompasses the duty to inform an interested party of the substance of the case against it and to allow it an opportunity to respond. The substance of the case against an interested party would be conveyed by the provision of a fair summary of the relevant evidence.
3. The Divisional Court refused to order a stay of proceedings before the Board of Inquiry as sought by FWTAO. The stay had been sought pending resolution by the Court of Appeal of a constitutional challenge to the validity of the by-law in question. Among other factors, the Court recited that proceedings before a Board of Inquiry should be dealt with expeditiously. There is a public interest in the timely resolution of complaints under the *Human Rights Code*.

JURISDICTION OF TRIBUNALS TO APPLY THE CHARTER

Cuddy Chicks Ltd. v. Ontario Labour Relations Board et al.

In the course of a hearing with respect to an application for union certification, the Ontario Labour Relations Board held that it was a court of competent jurisdiction under Section 24(1) of the Charter. The O.L.R.B. further held that Section 52 of the Charter required it to consider whether the provisions of the Ontario Labour Relations Act are consistent with the Charter.

The Divisional Court upheld the O.L.R.B. decision. It stated that the O.L.R.B. must examine all applicable law, and apply the law, including the Charter, to proceedings before it.

Cryderman v. York Condominium Corporation

An interim decision of the Board of Inquiry in this case dealt with two important issues.

Firstly, one of the complainants alleged that Section 9(a) of the *Code* is contrary to the equality rights guaranteed by Section 15 of the Charter. The respondents argued that the board did not have the jurisdiction to make a finding that a provision of the *Code* is contrary to the Charter. The board held that it does have such jurisdiction under Section 52(1) of the Charter, since a body charged with determining rights has a duty to make its decision within the ambit of the constitutional protection of those rights. In addition, there are practical reasons why a Board of Inquiry should have the power to apply the Charter. Specifically, it prevents the splitting of issues and the duplication of evidence which would otherwise result. The board also considered it appropriate for a specialized human rights tribunal to deal with the Charter matter in the first instance in the context of all of the facts of the case. Although it was not necessary, the board took the view that a Board of Inquiry is a "court of competent jurisdiction" within the meaning of Section 24(1) of the Charter.

The second issue was whether the directors of the respondent condominium corporations could be named as individual respondents. The board held that a complaint can name, as individual respondents, the directors and officers who caused the corporate entity to take the action that is alleged to offend the *Code*. The board also noted that a "board of directors" cannot be named as a respondent as it is not, in itself, a legal entity or "person" within the meaning of Section 45(c) of the *Code*.

ONTARIO HUMAN RIGHTS COMMISSION STAFF

at March 31, 1989

Chief Commissioner's Office
Villa-Real Alonso, Edna
Cain, Wylie
Douglas, Reata
Singh, Vidya
St. Lewis, Joanne

Executive Director's Office
Gage, Mike
Jim, Serena

Legal Unit
Campbell, Fiona
Davis, Lillian
Ffolkes-Abrahams, Sharon
Frawley, Mark
Ginsburg, Marilyn
Griffin, Anthony
Molloy, Anne
Rice, Deidre
Rosen, Joanne
* Wilson, Chris
Zucker, Morrie

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* Laporte, Maureen
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Reynolds, Jessica
Sharp, Bill
Tharrenos, Tia
* Whaley, Catherine
Yatco, Jose

Policy & Research Unit
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Wacyk, Tanja

Systemic Unit
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Bhawanie, Stella
Dahlin, Anita
* Downey, Terry
Mahoney, Owen
Ramanujam, Sita
Sequeira, Vera
Whiteside, Anne

Compliance Unit
Hurley, Helen
Schreiter, Marty

Reconsideration Unit
* Edwards, Neil
* Lee, Rose
Svegzda, Laima

Communications & Education Unit
Justason, Barbara
Kudell, Karin
Shefman, Alan
Silberman, Toni

Toronto Central
Ackroyd, Lynda
Balter, Isreal
Barrett, Janet
Della-Nebbia, Nancy
Gaspar, Fern
Hasan, Zahra
Johnson, Bev
Marchand, Carole
Mullings, Paulette
Obermuller, Diane
Speranzini, Gary
Stern, Doris
Williams, Ashworth
* Yale, Michael
Evans, Jennifer

Toronto East
Caffrey, Colm
Della Vella, Rick
Fernandes, Helen
Fiddes, Judith
Horsford, Jocelyn
Ioi, Rod
Kerna, Gloria
Lloyd, Eva
Masellis, Vicki
Palacio, Roger
Philips, Lolita
Seales, Robert
Thoo, Valerie
* Wells, Stan

Toronto West
Chapman, Shirley
Cooper, Connie
Fox, Anita
Gayle, Harold
Hajsaniuk, Drew
Lam, Marian
Marcuz, Vic
McPhee, Nola
* Molloy, Peggy
Morrison, Glen
Samuel, Mary
Sibblies, Geanine
Soondarsingh, Vijay

Eastern Region
* Bourne, Phyllis
Cotton, W. Murray
Dain, Margaret
* Delph, Esther
Kalimootoo, Roxanne
Legault, Thérèse
Maillet, René
Polley, Joe
Richard, Maurice
* Sharples, Nancy
Ushe-Robb, Thoko

Northern Region
Buffington, Margaret
Fratesi, Debra
Lapalme, Gilles
* Lincourt, Diane
* Owsiany, Mary Ann
Payne, Lynne
Ryan, Lori
* Serpell, Frances
St. Onge, Joanne
Welch, Dan
Wesley, Andrew
* Zack, Leslie

Southwest Region
* Barit, Margaret
* Barker, Sheila
Barnes, Dorothy
Blackwood, Calvin
Burns, Walter
Carrick, Anne
Harrington, Rick
Howard, Mary Ann
Koushik, Aruna
* Riberdy, Joyce
Schiller, David
Senay, Diane
* Sylva, Margaret
Wisdom-Lumsden, M.

Hamilton/Niagara Region
Brick, Jackie
* Fukuzawa, Brian
Giesbrecht, Dennis
Hershorn, Barbara
Jostman, Susan
McSween, Selwyn
* Musheega, Abbey
* Ras, Theresa
Strojin, Anny
Sim, Fiona
Witter, Merv

* These staff members are on contract or secondment as of February 27, 1989

COMMISSION OFFICES

Head Office
400 University Avenue
Toronto, Ont.
M7A 2R9
(416) 965-6841

Hamilton
119 King Street West, 8th Floor
L8N 3Z9
(416) 521-7870

Thunder Bay
435 James Street South, 4th Floor
P7E 6E3
(807) 475-1691

Kingston
1055 Princess Street, Ste. 105
K7L 1H3
(613) 545-4340

Sudbury
199 Larch Street, 6th Floor
P3E 5P9
(705) 675-4455

Timmins
273 Third Avenue, Ste. 400
P4N 1E2
(705) 267-6231

Kitchener
824 King Street West, 4th Floor
N2G 1G1
(519) 744-8101

Toronto Central
400 University Avenue, 12th Floor
Toronto M7A 2R9
(416) 965-6841

London
205 Oxford Street East, 2nd Floor
N6A 5G6
(519) 439-3231

Toronto East
2500 Lawrence Avenue E., 2nd Floor
Scarborough M1P 2R7
(416) 750-3575

Ottawa
2197 Riverside Drive, Ste. 301
K1H 7X3
(613) 523-7530

Toronto West
2 Robert Speck Parkway, Ste. 310
Mississauga L4Z 1H8
(416) 273-7811

Sault Ste. Marie
390 Bay Street, 3rd Floor
P6A 1X2
(705) 942-8417

Windsor
500 Ouellette Avenue, Ste. 305
N9A 1B3
(519) 256-8278

St. Catharines
205 King Street
L2R 3J5
(416) 684-7406

STATISTICAL TABLES 1988/89

TABLE 1 - COMPLAINTS RECEIVED BY REGION OF REGISTRATION AND GROUND

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	No Grounds	Total	Region % of Total
Eastern	29	7	9	47	11	2	14	12	6	127	3	–	1	–	–	**268**	15%
Hamilton/Niagara	13	7	5	30	16	1	22	7	11	83	–	–	2	–	–	**197**	11%
Northern	21	7	1	36	12	6	15	4	28	84	9	–	–	–	3	**226**	13%
Southwestern	32	11	4	29	23	3	19	9	8	102	1	–	–	–	1	**242**	14%
U.F.H.	–	–	1	1	–	–	–	–	1	18	–	–	–	–	–	**21**	1%
Toronto Central	48	12	9	36	17	8	48	8	11	110	4	1	6	–	–	**318**	18%
Toronto East	33	6	5	34	9	1	27	12	20	102	1	–	3	–	1	**254**	15%
Toronto West	36	1	20	17	18	–	11	9	10	72	4	–	7	2	1	**208**	12%
Total	**212**	**51**	**54**	**230**	**106**	**21**	**156**	**61**	**95**	**698**	**22**	**1**	**19**	**2**	**6**	**1734**	100%
Percentage	12%	3%	3%	13%	6%	1%	9%	4%	5%	40%	1%	–	1%	–	–	100%	

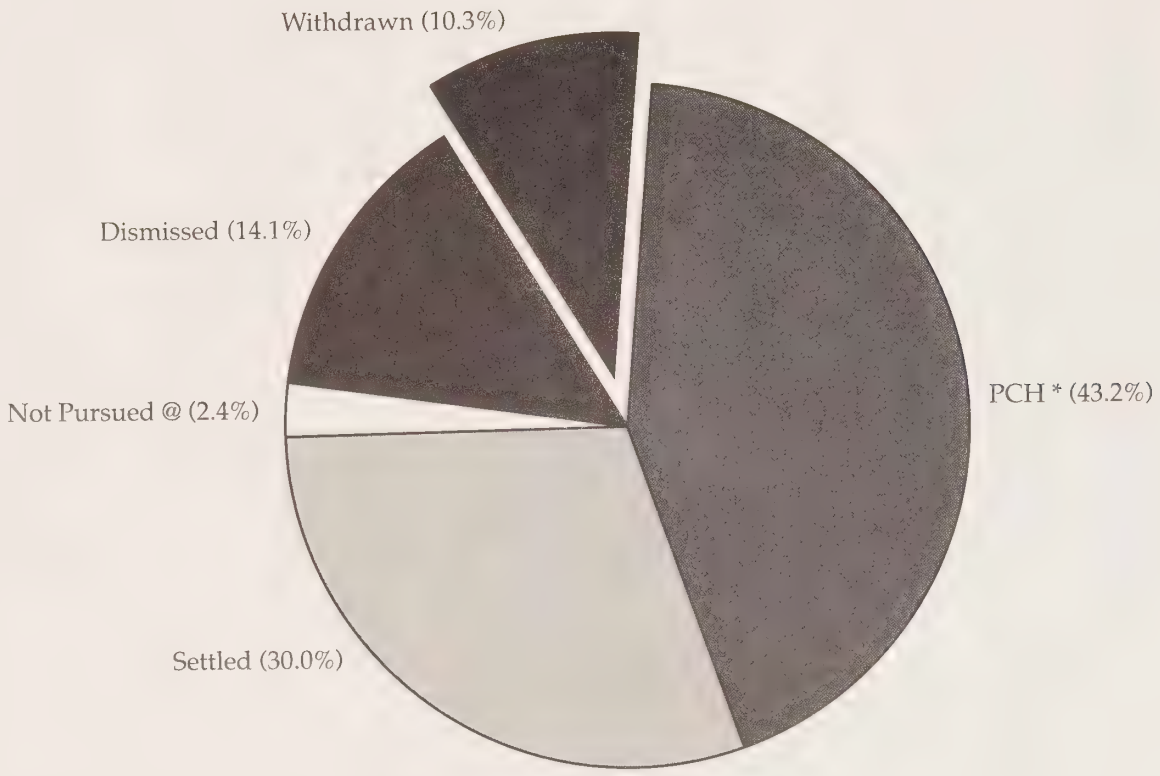
TABLE 2 - COMPLAINTS RECEIVED BY GROUND AND PROVISION

Ground: / Code Provisions:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	Total	Provision % of Total
Services	38	14	14	22	–	10	8	9	10	97	–	–	–	3	**225**	14
Accommodation	22	2	2	15	–	–	9	23	70	19	21	–	–	–	**183**	11
Contracts	–	–	1	–	–	–	–	1	1	–	–	–	–	–	**3**	–
Employment	151	34	36	191	106	11	136	28	14	562	1	1	1	3	**1275**	74
Vocational Associations	1	1	–	2	–	–	2	–	–	20	–	–	–	–	**26**	1
Reprisal	–	–	–	–	–	–	1	–	–	–	–	–	18	–	**19**	1
Breach of Settlement	–	–	1	–	–	–	–	–	–	–	–	–	2	–	**3**	–
Total	**212**	**51**	**54**	**230**	**106**	**21**	**156**	**61**	**95**	**698**	**22**	**1**	**21**	**6**	**1734**	100
Ground % of Total	12	3	3	13	6	1	9	4	5	40	1	–	1	–	100	
Extension of Code Provisions Also Cited in Complaints:																
Constructive Discrimination	2	4	1	3	1	3	13	1	4	46	1	–	–	–	**79**	57
Association Discrimination	5	5	–	1	–	1	1	2	4	5	–	–	–	–	**24**	17
Announced Discrimination	–	–	–	2	–	–	–	1	1	–	–	–	–	–	**4**	3
Advertising	–	1	–	2	–	–	9	2	1	5	–	–	–	–	**20**	14
Insurance	–	–	2	3	–	1	3	1	–	–	–	–	–	–	**10**	7
Application Forms	–	–	–	1	–	–	1	–	–	–	–	–	–	–	**2**	1
Total	**7**	**10**	**3**	**12**	**1**	**5**	**27**	**7**	**10**	**56**	**1**	–	–	–	**139**	100

TABLE 3 - COMPLAINTS RECEIVED BY TYPE OF HANDICAP AND PROVISION

Type of Handicap: / Provision:	Services	Accommodation	Contracts	Employment	Vocational Assoc.	Total	Percentage
Sensory (vision/hearing/speech/etc. impairment)	11	4	–	29	–	**44**	6
Respiratory (asthma/lung disease/etc.)	1	1	–	12	–	**14**	2
Limbs and Digits (amputation/impairment of limb/digit/etc.)	4	1	–	78	–	**83**	12
Cardiovascular (heart disease/hypertension/stroke/etc.)	2	–	–	15	–	**17**	2
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	11	1	–	11	–	**23**	3
Neurological (epilepsy/seizures/brain injury/etc.)	2	–	–	18	–	**20**	3
General Diseases or Disorders (allergies/cancer/diabetes/sick leave, etc.)	24	3	–	238	–	**265**	38
Miscellaneous (multiple handicaps/obesity/etc.)	7	–	–	81	17	**105**	15
Learning Disability (dyslexia/etc.)	1	–	–	2	–	**3**	–
Mental Retardation (or mental impairment)	10	2	–	5	–	**17**	2
Mental Disorder (Psychiatric illness/personality disorders, addictions/etc.)	8	4	–	31	2	**45**	6
Claim Under the Workers' Compensation Act	1	–	–	42	1	**44**	6
Reasonable Accommodation (S.16)	15	3	–	–	–	**18**	3
Total	**97**	**19**	**–**	**562**	**20**	**698**	100
Percentage	14%	3%	–	81%	3%	100%	

TABLE 4 - DISPOSITION OF CASES CLOSED



@ Dismissed, S.33
* Priority Case Handling

TABLE 5 - SETTLEMENTS EFFECTED BY GROUND

Ground:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Settlement:										
Race/Colour	$ 303,872	44	13	5	1	10	19	13	17	42
Ethnic Origin	169,103	9	6	2	–	2	1	2	5	10
Creed	25,000	8	9	1	–	–	4	1	2	7
Sex and Pregnancy	2,731,028	53	25	9	3	7	22	12	8	45
Sexual Harassment	164,833	46	8	2	–	10	14	9	14	44
Sexual Orientation	750	1	4	–	–	1	2	2	1	4
Age	139,323	25	8	2	–	6	15	3	6	25
Marital Status	16,875	11	12	2	–	2	6	3	7	15
Family Status	3,668	5	24	7	1	1	11	–	4	21
Handicap	385,941	135	114	14	1	12	33	38	24	110
Receipt of Public Assistance	–	–	4	3	–	–	1	–	2	2
Reprisal/Breach/No Grounds	19,500	4	2	–	1	–	1	–	–	–
Total	**$ 3,959,893**	**341**	**229**	**47**	**7**	**51**	**129**	**83**	**90**	**325**

TABLE 6 - COMPLAINTS CLOSED BY DISPOSITION, GROUND AND PROVISION

Ground: / Type of Disposition:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
EMPLOYMENT															
Settled	90	22	15	126	71	4	58	23	15	351	1	–	–	**776**	74
Dismissed/Not Pursued	28	6	2	15	11	–	25	2	–	61	1	2	2	**155**	15
Withdrawn	12	6	3	18	19	1	10	1	2	46	–	–	–	**118**	11
Sub-Total	130	34	20	159	101	5	93	26	17	458	2	2	2	**1049**	100
ACCOMMODATION															
Settled	12	1	–	8	–	–	10	17	47	6	13	–	–	**114**	89
Dismissed/Not Pursued	1	1	–	–	–	–	2	1	5	–	–	–	–	**10**	8
Withdrawn	–	–	–	–	–	–	1	–	2	–	1	–	–	**4**	3
Sub-Total	13	2	–	8	–	–	13	18	54	6	14	–	–	**128**	100
SERVICES															
Settled	21	9	9	10	–	6	2	2	8	37	–	–	–	**104**	75
Dismissed/Not Pursued	2	2	–	4	–	–	–	–	–	9	–	–	2	**19**	14
Withdrawn	4	–	1	2	–	–	–	–	–	8	–	–	–	**15**	11
Sub-Total	27	11	10	16	–	6	2	2	8	54	–	–	2	**138**	100
CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT															
Settled	1	–	1	2	–	–	–	1	–	1	–	–	7	**13**	46
Dismissed/Not Pursued	–	–	1	–	–	–	–	–	–	1	–	–	8	**10**	36
Withdrawn	–	–	–	1	–	–	1	–	1	1	–	–	1	**5**	18
Sub-Total	1	–	2	3	–	–	1	1	1	3	–	–	16	**28**	100

TABLE 7 - COMPLAINTS CLOSED BY DISPOSITION, SEX OF COMPLAINANT AND GROUND

	Settled Nos. %	Dismissed Nos. %	Withdrawn Nos. %	Total Nos.
MALES				
Race	65 (64)	25 (25)	11 (11)	**101**
Ethnic Origin	16 (55)	9 (31)	4 (14)	**29**
Creed	14 (82)	2 (12)	1 (6)	**17**
Sex and Pregnancy	23 (72)	5 (16)	4 (13)	**32**
Sexual Harassment	– –	– –	2 (100)	**2**
Age	27 (48)	19 (34)	10 (18)	**56**
Marital Status	10 (91)	1 (9)	– –	**11**
Family Status	19 (90)	– –	2 (10)	**21**
Handicap	197 (69)	49 (19)	34 (12)	**260**
Public Assistance	3 (75)	1 (25)	– –	**4**
Record of Offences	– –	2 (100)	– –	**2**
Other *	3 (33)	5 (56)	2 (11)	**10**
Total	**377** –	**118** –	**70** –	**565**
Percentage	67% –	21% –	12% –	100%
FEMALES				
Race	58 (78)	12 (16)	4 (5)	**74**
Ethnic Origin	16 (89)	– –	2 (11)	**18**
Creed	11 (73)	1 (7)	3 (20)	**15**
Sex and Pregnancy	121 (80)	14 (9)	17 (11)	**152**
Sexual Harassment	70 (71)	11 (11)	17 (17)	**98**
Age	39 (80)	8 (16)	2 (4)	**49**
Marital Status	33 (92)	2 (6)	1 (3)	**36**
Family Status	50 (86)	5 (9)	3 (5)	**58**
Handicap	198 (83)	22 (9)	20 (8)	**240**
Public Assistance	11 (92)	– –	1 (8)	**12**
Record of Offences	– –	– –	– –	**–**
Other *	2 (67)	1 (33)	– –	**3**
Total	**609** –	**76** –	**70** –	**755**
Percentage	81% –	10% –	9% –	100%

* Sexual Orientation, Reprisal, Breach of Settlement and No Ground (Section 33).

TABLE 8 - EMPLOYMENT COMPLAINTS CLOSED BY DISPOSITION, STAGE OF EMPLOYMENT AND GROUND

Type of Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Breach/No Grounds	Total	% of Total
RECRUITMENT AND HIRING														
Settled	18	5	1	34	–	34	9	8	46	1	–	–	**156**	84
Dismissed/Not Pursued	3	3	1	1	–	5	–	–	4	–	1	–	**18**	10
Withdrawn	–	1	–	1	–	3	–	2	5	–	–	–	**12**	6
Sub-Total	21	9	2	36	–	42	9	10	55	1	1	–	**186**	100
% of Total	16	26	10	23	–	45	35	59	12	50	50	–	20	
TERMINATION														
Settled	39	10	4	63	1	17	8	5	250	–	–	–	**397**	73
Dismissed/Not Pursued	10	1	–	7	–	16	1	–	47	–	–	1	**83**	15
Withdrawn	6	4	2	6	–	7	1	–	35	–	–	–	**61**	11
Sub-Total	55	15	6	76	1	40	10	5	332	–	–	1	**541**	100
% of Total	42	44	30	48	20	43	38	29	72	–	–	50	57	
DURING EMPLOYMENT														
Settled	33	7	10	29	3	7	6	2	55	–	–	–	**152**	69
Dismissed/Not Pursued	15	2	1	7	–	4	1	–	10	1	1	1	**43**	19
Withdrawn	6	1	1	11	1	–	–	–	6	–	–	–	**26**	12
Sub-Total	54	10	12	47	4	11	7	2	71	1	1	1	**221**	100
% of Total	42	29	60	30	80	12	27	12	16	50	50	50	23	
Total	**130**	**34**	**20**	**159**	**5**	**93**	**26**	**17**	**458**	**2**	**2**	**2**	**948**	100
Percentage	100	100	100	100	100	100	100	100	100	100	100	100		

TABLE 9 - EMPLOYMENT COMPLAINTS CLOSED BY TYPE OF WORK AND GROUND

Ground: / Type of Work:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal, etc.	Total	% of Total
Professional/Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	40	11	4	35	16	-	29	2	2	55	1	–	2	**197**	19
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	11	–	1	23	16	1	13	6	4	23	1	1	–	**100**	9
Clerical (Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	23	6	4	36	22	1	15	7	3	49	–	–	–	**166**	16
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	14	–	–	12	3	–	7	–	2	49	–	–	–	**87**	8
Operatives (Punch Press/Lathe/Machine/ Crane Operator, Welder, etc.)	9	1	3	2	8	1	3	4	–	51	–	–	–	**82**	8
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	10	3	1	30	18	1	10	3	2	58	–	1	–	**137**	13
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	23	13	7	21	18	1	16	4	4	173	–	–	–	**280**	27
Total	**130**	**34**	**20**	**159**	**101**	**5**	**93**	**26**	**17**	**458**	**2**	**2**	**2**	**1049**	100

TABLE 10 - CASES CLOSED BY RESPONDENTS' TYPE OF INDUSTRY AND GROUNDS

Ground: / Type of Industry:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Records of Offence	No grounds etc.	Total	% of Total
Natural Resources	**1**	**–**	**–**	**4**	**–**	**1**	**–**	**1**	**–**	**8**	**–**	**–**	**–**	**15**	1
Manufacturing															
Metals/Parts/Machinery	9	1	–	12	5	–	6	1	1	50	–	–	–	85	
Food/Tobacco	5	–	–	4	3	–	–	2	–	24	–	–	1	39	
Wood/Furniture/Paper	3	–	2	5	7	–	3	1	–	23	–	–	–	44	
Automotive/Aircraft	6	1	–	1	8	1	1	–	1	29	–	–	1	49	
Electrical	2	1	1	1	2	–	2	–	–	15	–	–	1	25	
Other	13	–	5	10	7	–	8	2	4	54	–	–	–	103	
Sub-Total	**38**	**3**	**8**	**33**	**32**	**1**	**20**	**6**	**6**	**195**	**–**	**–**	**3**	**345**	26
Construction	**–**	**2**	**–**	**2**	**2**	**–**	**–**	**–**	**1**	**17**	**–**	**–**	**–**	**24**	2
Transportation/Communications/ Utilities	**6**	**6**	**–**	**2**	**2**	**–**	**7**	**–**	**1**	**18**	**–**	**–**	**3**	**45**	3
Trade and Retail	**27**	**6**	**4**	**27**	**19**	**–**	**20**	**9**	**7**	**56**	**1**	**1**	**1**	**178**	13
Finance, Insurance, Real Estate	**18**	**4**	**–**	**19**	**2**	**–**	**16**	**19**	**55**	**32**	**15**	**–**	**3**	**183**	14
Community/Business/ Personal Services															
Schools/Colleges/Universities	10	4	7	6	1	–	12	2	–	10	–	–	1	53	
Hospitals/Physicians	11	–	2	16	9	2	4	–	–	47	–	–	3	94	
Employment Agencies	–	2	2	1	–	–	3	1	–	5	–	–	–	14	
Hotels/Restaurants	15	4	3	22	15	1	4	2	3	45	–	–	–	114	
Other	33	8	4	34	14	4	14	4	3	58	–	–	1	177	
Sub-Total	**69**	**18**	**18**	**79**	**39**	**7**	**37**	**9**	**6**	**165**	**–**	**–**	**5**	**452**	34
Public Administration	**12**	**7**	**2**	**21**	**4**	**2**	**10**	**3**	**4**	**31**	**–**	**1**	**5**	**102**	8
Unspecified and Inapplicable	-	**1**	–	–	–	–	–	–	–	–	–	–	–	**1**	
Total	**171**	**47**	**32**	**187**	**100**	**11**	**110**	**47**	**80**	**522**	**16**	**2**	**20**	**1345**	100

TABLE 11 - BOARDS OF INQUIRY APPOINTED AND COMPLETED

	1988/89	1987/88
Boards Appointed	34	26
Boards Completed:	28	46
Pre-hearing Settlements	15	23
Decisions for Complainant	10	18
Decisions for Respondent	3	5
Board Decisions Under Appeal	6	5

TABLE 12 - INQUIRIES, VOLUNTARY COMPLIANCE AND PUBLIC EDUCATION

Compliance Division	1988/89	1987/88
Inquiries	60,440	56,791
Referrals	12,652	16,812
Informal Resolutions	98	74
Application Form Reviews	727	798
Advertising Reviews	170	254
Exemptions	96	128
Public Education Activities	556	420
Publications Distributed	186,968	230,892

TABLEAU 11 - COMMISSIONS D'ENQUÊTE

	1988-1989	1987-1988
Commissions nommées	34	26
Audiences tenues :	28	46
Règlements intervenus avant l'audience	15	23
Décisions favorables au plaignant	10	18
Décisions favorables à l'intimé	3	5
Décisions en appel	6	5

TABLEAU 12 - DEMANDES DE RENSEIGNEMENTS, OBSERVANCE SPONTANÉE DE LA LOI ET ÉDUCATION DU PUBLIC

Section du respect de la loi	1988-1989	1987-1988
Demandes de renseignements	60 440	56 791
Recommandations	12 652	16 812
Règlements officieux	98	74
Révision de formules de demande d'emploi	727	798
Révision d'annonces	170	254
Exemptions	96	128
Activités d'éducation du public	556	420
Publications distribuées	186 968	230 892

TABLEAU 10 - RÉPARTITION DES PLAINTES CLASSÉES, PAR SECTEUR INDUSTRIEL ET MOTIF DE DISCRIMINATION

Motif : / Secteur industriel :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Aucun motif, etc.	Total	Pourcentage du total
Richesses naturelles	**1**	**–**	**–**	**4**	**–**	**1**	**–**	**1**	**–**	**8**	**–**	**–**	**–**	**15**	1
Secteur manufacturier															
Métaux, pièces, machines	9	1	–	12	5	–	6	1	1	50	–	–	–	85	
Aliments, tabac	5	–	–	4	3	–	–	2	–	24	–	–	1	39	
Bois, ameublement, papier	3	–	2	5	7	–	3	1	–	23	–	–	–	44	
Automobile, aéronautique	6	1	–	1	8	1	1	–	1	29	–	–	1	49	
Appareils électriques	2	1	1	1	2	–	2	–	–	15	–	–	1	25	
Autres	13	–	5	10	7	–	8	2	4	54	–	–	–	103	
Total partiel	**38**	**3**	**8**	**33**	**32**	**1**	**20**	**6**	**6**	**195**	**–**	**–**	**3**	**345**	26
Construction	**–**	**2**	**–**	**2**	**2**	**–**	**–**	**–**	**1**	**17**	**–**	**–**	**–**	**24**	2
Transport, communications, services publics	**6**	**6**	**–**	**2**	**2**	**–**	**7**	**–**	**1**	**18**	**–**	**–**	**3**	**45**	3
Vente au détail	**27**	**6**	**4**	**27**	**19**	**–**	**20**	**9**	**7**	**56**	**1**	**1**	**1**	**178**	13
Finance, assurance, immobilier	**18**	**4**	**–**	**19**	**2**	**–**	**16**	**19**	**55**	**32**	**15**	**–**	**3**	**183**	14
Services communautaires, d'affaires et personnels															
Écoles, collèges et universités	10	4	7	6	1	–	12	2	–	10	–	–	1	53	
Hôpitaux et médecins	11	–	2	16	9	2	4	–	–	47	–	–	3	94	
Agences de placement	–	2	2	1	–	–	3	1	–	5	–	–	–	14	
Hôtels et restaurants	15	4	3	22	15	1	4	2	3	45	–	–	–	114	
Autres	33	8	4	34	14	4	14	4	3	58	–	–	1	177	
Total partiel	**69**	**18**	**18**	**79**	**39**	**7**	**37**	**9**	**6**	**165**	**–**	**–**	**5**	**452**	34
Administration publique	**12**	**7**	**2**	**21**	**4**	**2**	**10**	**3**	**4**	**31**	**–**	**1**	**5**	**102**	8
Non précisé et sans objet	**-**	**1**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**1**	
Total	**171**	**47**	**32**	**187**	**100**	**11**	**110**	**47**	**80**	**522**	**16**	**2**	**20**	**1 345**	100

TABLEAU 9 - RÉPARTITION DES PLAINTES CLASSÉES, PAR TYPE D'EMPLOI ET MOTIF DE DISCRIMINATION

Motif : / Type d'emploi :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles ou violation du règlement intervenu ou aucun motif	Total	Pourcentage du total
Professions libérales, gestion, technique (avocats, techniciens, cadres, enseignants, inspecteurs, infirmiers, etc.)	40	11	4	35	16	–	29	2	2	55	1	–	2	**197**	19
Ventes (représentants commerciaux, responsables des achats, commis, etc.)	11	–	1	23	16	1	13	6	4	23	1	1	–	**100**	9
Travail de bureau (dactylos, commis au classement ou aux écritures, réceptionnistes, perforateurs, etc.)	23	6	4	36	22	1	15	7	3	49	–	–	–	**166**	16
Artisans et contremaîtres (plombiers, boulangers, coiffeurs, chefs d'équipe, mécaniciens, etc.)	14	–	–	12	3	–	7	–	2	49	–	–	–	**87**	8
Opérateurs (opérateurs de presse à découper, de tour, de machines, conducteurs de grue, soudeurs, etc.)	9	1	3	2	8	1	3	4	–	51	–	–	–	**82**	8
Services (serveurs et serveuses, aides ménagères, gardiens de sécurité, surintendants d'immeubles, etc.)	10	3	1	30	18	1	10	3	2	58	–	1	–	**137**	13
Travail général (conducteurs, expéditionnaires, nettoyeurs, ouvriers de chaînes de montage, manoeuvres, etc.)	23	13	7	21	18	1	16	4	4	173	–	–	–	**280**	27
Total	**130**	**34**	**20**	**159**	**101**	**5**	**93**	**26**	**17**	**458**	**2**	**2**	**2**	**1 049**	100

TABLEAU 8 - RÉPARTITION DES PLAINTES PAR TYPE DE RÈGLEMENT ET MOTIF DE DISCRIMINATION EN MATIÈRE D'EMPLOI

Motif : / Type de règlement :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Violation du règlement intervenu ou aucun motif	Total	Pourcentage du total
RECRUTEMENT ET EMBAUCHAGE														
Plaintes réglées	18	5	1	34	–	34	9	8	46	1	–	–	**156**	84
Plaintes rejetées/classées	3	3	1	1	–	5	–	–	4	–	1	–	**18**	10
Plaintes retirées	–	1	–	1	–	3	–	2	5	–	–	–	**12**	6
Total partiel	21	9	2	36	–	42	9	10	55	1	1	–	**186**	100
Pourcentage	16	26	10	23	–	45	35	59	12	50	50	–	20	
CESSATION D'EMPLOI														
Plaintes réglées	39	10	4	63	1	17	8	5	250	–	–	–	**397**	73
Plaintes rejetées/classées	10	1	–	7	–	16	1	–	47	–	–	1	**83**	15
Plaintes retirées	6	4	2	6	–	7	1	–	35	–	–	–	**61**	11
Total partiel	55	15	6	76	1	40	10	5	332	–	–	1	**541**	100
Pourcentage	42	44	30	48	20	43	38	29	72	–	–	50	57	
EN COURS D'EMPLOI														
Plaintes réglées	33	7	10	29	3	7	6	2	55	–	–	–	**152**	69
Plaintes rejetées/classées	15	2	1	7	–	4	1	–	10	1	1	1	**43**	19
Plaintes retirées	6	1	1	11	1	–	–	–	6	–	–	–	**26**	12
Total partiel	54	10	12	47	4	11	7	2	71	1	1	1	**221**	100
Pourcentage	42	29	60	30	80	12	27	12	16	50	50	50	23	
Total	**130**	**34**	**20**	**159**	**5**	**93**	**26**	**17**	**458**	**2**	**2**	**2**	**948**	100
Pourcentage	100	100	100	100	100	100	100	100	100	100	100	100		

TABLEAU 7 - RÉPARTITION DES PLAINTES SELON LE TYPE DE RÈGLEMENT, LE SEXE DU PLAIGNANT ET LE MOTIF DE DISCRIMINATION

	Plaintes réglées Nombre %	Plaintes rejetées Nombre %	Plaintes retirées Nombre %	Total
HOMMES				
Race	65 (64)	25 (25)	11 (11)	**101**
Origine ethnique	16 (55)	9 (31)	4 (14)	**29**
Croyance	14 (82)	2 (12)	1 (6)	**17**
Sexe et grossesse	23 (72)	5 (16)	4 (13)	**32**
Harcèlement sexuel	– –	– –	2 (100)	**2**
Âge	27 (48)	19 (34)	10 (18)	**56**
État matrimonial	10 (91)	1 (9)	– –	**11**
État familial	19 (90)	– –	2 (10)	**21**
Handicap	197 (69)	49 (19)	34 (12)	**260**
État d'assisté social	3 (75)	1 (25)	– –	**4**
Existence d'un casier judiciaire	– –	2 (100)	– –	**2**
Divers *	3 (33)	5 (56)	2 (11)	**10**
Total	**377** –	**118** –	**70** –	**565**
Pourcentage	67 % –	21 % –	12 % –	100 %
FEMMES				
Race	58 (78)	12 (16)	4 (5)	**74**
Origine ethnique	16 (89)	– –	2 (11)	**18**
Croyance	11 (73)	1 (7)	3 (20)	**15**
Sexe et grossesse	121 (80)	14 (9)	17 (11)	**152**
Harcèlement sexuel	70 (71)	11 (11)	17 (17)	**98**
Âge	39 (80)	8 (16)	2 (4)	**49**
État matrimonial	33 (92)	2 (6)	1 (3)	**36**
État familial	50 (86)	5 (9)	3 (5)	**58**
Handicap	198 (83)	22 (9)	20 (8)	**240**
État d'assisté social	11 (92)	– –	1 (8)	**12**
Existence d'un casier judiciaire	– –	– –	– –	**–**
Divers *	2 (67)	1 (33)	– –	**3**
Total	**609** –	**76** –	**70** –	755
Pourcentage	81 % –	10 % –	9 % –	100 %

* Orientation sexuelle, représailles, violation du règlement intervenu, aucun motif (article 33).

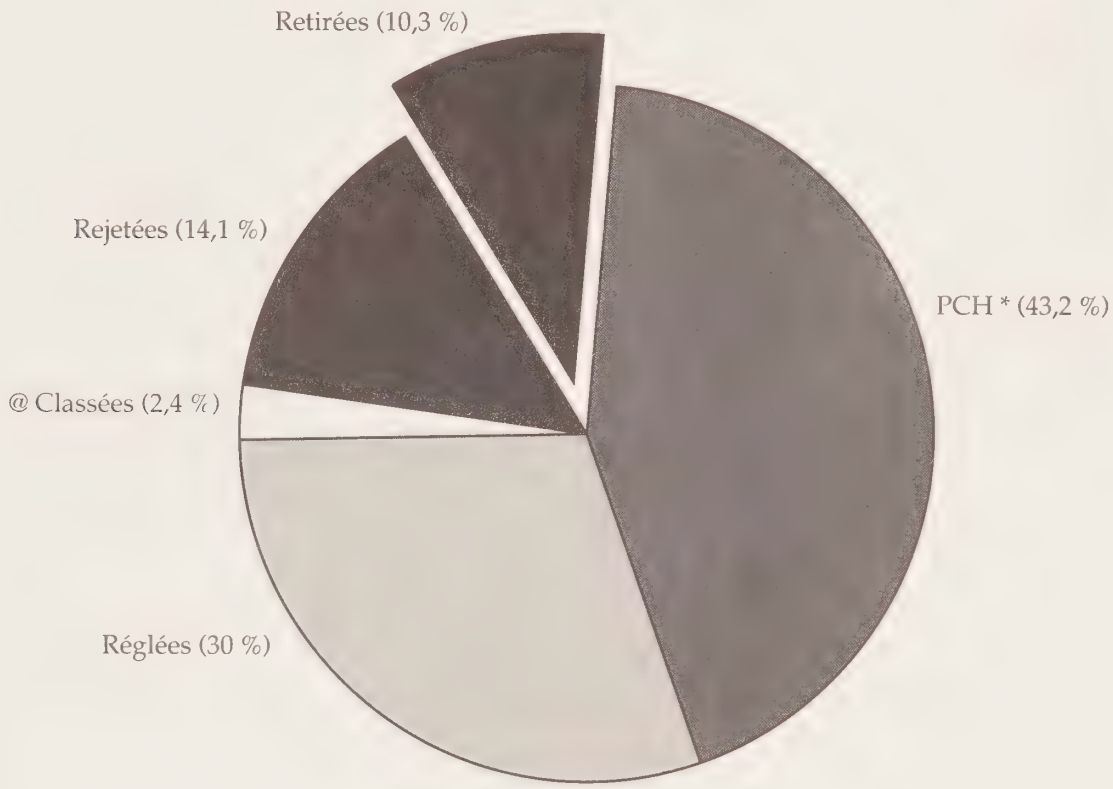
TABLEAU 6 - RÉPARTITION DES PLAINTES PAR TYPE DE RÈGLEMENT, MOTIF DE DISCRIMINATION ET DOMAINE

Motif : / Type de règlement :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles ou violation du règlement intervenu ou aucun motif	Total	Pourcentage
EMPLOI															
Plaintes réglées	90	22	15	126	71	4	58	23	15	351	1	–	–	**776**	74
Plaintes rejetées/classées	28	6	2	15	11	–	25	2	–	61	1	2	2	**155**	15
Plaintes retirées	12	6	3	18	19	1	10	1	2	46	–	–	–	**118**	11
Total partiel	130	34	20	159	101	5	93	26	17	458	2	2	2	**1 049**	100
LOGEMENT															
Plaintes réglées	12	1	–	8	–	–	10	17	47	6	13	–	–	**114**	89
Plaintes rejetées/classées	1	1	–	–	–	–	2	1	5	–	–	–	–	**10**	8
Plaintes retirées	–	–	–	–	–	–	1	–	2	–	1	–	–	**4**	3
Total partiel	13	2	–	8	–	–	13	18	54	6	14	–	–	**128**	100
SERVICES															
Plaintes réglées	21	9	9	10	–	6	2	2	8	37	–	–	–	**104**	75
Plaintes rejetées/classées	2	2	–	4	–	–	–	–	–	9	–	–	2	**19**	14
Plaintes retirées	4	–	1	2	–	–	–	–	–	8	–	–	–	**15**	11
Total partiel	27	11	10	16	–	6	2	2	8	54	–	–	2	**138**	100
CONTRATS, ASSOCIATIONS PROFESSIONNELLES, REPRÉSAILLES, VIOLATION DU RÈGLEMENT INTERVENU															
Plaintes réglées	1	–	1	2	–	–	–	1	–	1	–	–	7	**13**	46
Plaintes rejetées/classées	–	–	1	–	–	–	–	–	–	1	–	–	8	**10**	36
Plaintes retirées	–	–	–	1	–	–	1	–	1	1	–	–	1	**5**	18
Total partiel	1	–	2	3	–	–	1	1	1	3	–	–	16	**28**	100

TABLEAU 5 - RÉPARTITION DES PLAINTES RÉGLÉES PAR MOTIF DE DISCRIMINATION

Motif :	Règlement : Dommages-intérêts	Nombre de plaignants indemnisés	Offre immédiate d'un emploi ou d'une installation	Offre ultérieure d'un emploi ou d'une installation	Programme d'action positive	Colloques pour le personnel de l'intimé	Révision des pratiques, méthodes et documents	Lettre de références ou correction des références	Lettre d'excuses adressée au plaignant	Déclaration écrite de politique de non-discrimination
Race ou couleur	303 872 $	44	13	5	1	10	19	13	17	32
Origine ethnique	169 103	9	6	2	–	2	1	2	5	10
Croyance	25 000	8	9	1	–	–	4	1	2	7
Sexe et grossesse	2 731 028	53	25	9	3	7	22	12	8	45
Harcèlement sexuel	164 833	46	8	2		10	14	9	14	34
Orientation sexuelle	750	1	4	–		1	2	2	1	4
Âge	139 323	25	8	2	–	6	13	3	6	25
État matrimonial	16 875	11	12	2	–	2	6	3	7	13
État familial	3 668	5	24	7	1	1	11	–	4	21
Handicap	385 941	135	114	14	1	12	33	38	24	110
État d'assisté social	–	–	4	3	–	–	1	–	2	2
Représailles/violation/aucun motif	19 500	4	2	–	1	–	1	–	–	
Total	**3 959 893 $**	**341**	**229**	**47**	**7**	**51**	**129**	**83**	**90**	**325**

TABLEAU 4 - RÉPARTITION DES PLAINTES PAR TYPE DE RÈGLEMENT



@ Rejetées, art. 33
* "Priority Case Handling" = résolution accélérée

TABLEAU 3 - RÉPARTITION DES PLAINTES PAR TYPE DE HANDICAP ET DOMAINE

Domaine : / Type de handicap :	Services	Logement	Contrats	Emploi	Associations professionnelles	Total	Pourcentage
Troubles sensoriels (de la vue, de l'ouïe, de la parole, etc.)	11	4	–	29	–	**44**	6
Troubles respiratoires (asthme, maladies pulmonaires, etc.)	1	1	–	12	–	**14**	2
Membres et doigts (amputation, déficience, etc.)	4	1	–	78	–	**83**	12
Troubles cardiovasculaires (troubles cardiaques, hypertension, accident vasculaire, etc.)	2	–	–	15	–	**17**	2
Troubles neuromusculaires (dystrophie, sclérose, paralysie cérébrale, quadriplégie, etc.)	11	1	–	11	–	**23**	3
Troubles neurologiques (épilepsie, crises, lésions cérébrales, etc.)	2	–	–	18	–	**20**	3
Affections et troubles d'ordre général (allergies, cancer, diabète, etc.)	24	3	–	238	–	**265**	38
Divers (handicaps multiples, obésité, etc.)	7	–	–	81	17	**105**	15
Difficultés d'apprentissage (dyslexie, etc.)	1	–	–	2	–	**3**	–
Déficience mentale (ou affaiblissement intellectuel)	10	2	–	5	–	**17**	2
Troubles mentaux (troubles psychiatriques, troubles de la personnalité, toxicomanies, etc.)	8	4	–	31	2	**45**	6
Plaintes au titre de la Loi sur les accidents du travail	1	–	–	42	1	**44**	6
Adaptation raisonnable (art.16)	15	3	–	–	–	**18**	3
Total	**97**	**19**	**–**	**562**	**20**	**698**	100
Pourcentage	14 %	3 %	–	81 %	3 %	100 %	

TABLEAU 2 - RÉPARTITION DES PLAINTES PAR MOTIF DE DISCRIMINATION ET DOMAINE

Motif : / Domaine :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social (logement seulement)	Existence d'un casier judiciaire (emploi seulement)	Représailles ou violation du règlement intervenu	Aucun motif (art. 33)	Total	Pourcentage
Services	38	14	14	22	–	10	8	9	10	97	–	–	–	3	**225**	14
Logement	22	2	2	15	–	–	9	23	70	19	21	–	–	–	**183**	11
Contrats	–	–	1	–	–	–	–	1	1	–	–	–	–	–	**3**	–
Emploi	151	34	36	191	106	11	136	28	14	562	1	1	1	3	**1 275**	74
Associations professionnelles	1	1	–	2	–	–	2	–	–	20	–	–	–	–	**26**	1
Représailles	–	–	–	–	–	–	1	–	–	–	–	–	18	–	**19**	1
Violation du règlement intervenu	–	–	1	–	–	–	–	–	–	–	–	–	2	–	**3**	–
Total	**212**	**51**	**54**	**230**	**106**	**21**	**156**	**61**	**95**	**698**	**22**	**1**	**21**	**6**	**1 734**	100
Pourcentage	12	3	3	13	6	1	9	4	5	40	1	–	1	–	100	
Plaintes fondées sur les nouvelles dispositions du Code :																
Discrimination indirecte	2	4	1	3	1	3	13	1	4	46	1	–	–	–	**79**	57
Discrimination fondée sur l'association	5	5	–	1	–	1	1	2	4	5	–	–	–	–	**24**	17
Intention d'enfreindre un droit	–	–	–	2	–	–	–	1	1	–	–	–	–	–	**4**	3
Publicité	–	1	–	2	–	–	9	2	1	5	–	–	–	–	**20**	14
Assurance	–	–	2	3	–	1	3	1	–	–	–	–	–	–	**10**	7
Demandes d'emploi	–	–	–	1	–	–	1	–	–	–	–	–	–	–	**2**	1
Total	**7**	**10**	**3**	**12**	**1**	**5**	**27**	**7**	**10**	**56**	**1**	**–**	**–**	**–**	**139**	100

TABLEAU 1 - RÉPARTITION DES PLAINTES PAR RÉGION ET MOTIF DE DISCRIMINATION

Motif : / Région :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles	Violation du règlement intervenu	Aucun motif	Total	Pourcentage de l'ensemble
Est	29	7	9	47	11	2	14	12	6	127	3	–	1	–	–	**268**	15 %
Hamilton-Niagara	13	7	5	30	16	1	22	7	11	83	–	–	2	–	–	**197**	11 %
Nord	21	7	1	36	12	6	15	4	28	84	9	–	–	–	3	**226**	13 %
Sud-Ouest	32	11	4	29	23	3	19	9	8	102	1	–	–	–	1	**242**	14 %
U.P.H.	–	–	1	1	–	–	–	–	1	18	–	–	–	–	–	**21**	1 %
Toronto-Centre	48	12	9	36	17	8	48	8	11	110	4	1	6	–	–	**318**	18 %
Toronto-Est	33	6	5	34	9	1	27	12	20	102	1	–	3	–	1	**254**	15 %
Toronto-Ouest	36	1	20	17	18	–	11	9	10	72	4	–	7	2	1	**208**	12 %
Total	**212**	**51**	**54**	**230**	**106**	**21**	**156**	**61**	**95**	**698**	**22**	**1**	**19**	**2**	**6**	**1 734**	100 %
Pourcentage	12 %	3 %	3 %	13 %	6 %	1 %	9 %	4 %	5 %	40 %	1 %	–	1 %	–	–	100 %	

STATISTIQUES 1988-1989

BUREAUX DE LA COMMISSION

Bureau principal
400, avenue University
Toronto (Ontario)
M7A 2R9
(416) 965-6841

Hamilton
119, rue King ouest
8e étage
L8N 3Z9
(416) 521-7870

Thunder Bay
435, rue James sud
4e étage
P7E 6E3
(807) 475-1691

Kingston
1055, rue Princess
Bureau 105
K7L 1H3
(613) 545-4340

Sudbury
199, rue Larch
6e étage
P3E 5P9
(705) 675-4455

Timmins
273, 3e avenue
Bureau 400
P4N 1E2
(705) 267-6231

Kitchener
824, rue King ouest
4e étage
N2G 1G1
(519) 744-8101

Toronto-Centre
400, avenue University
12e étage
Toronto M7A 2R9
(416) 965-6841

London
205, rue Oxford est
2e étage
N6A 5G6
(519) 439-3231

Toronto-Est
2500, avenue Lawrence est
2e étage
Scarborough M1P 2R7
(416) 750-3575

Ottawa
2197, promenade Riverside
Bureau 301
K1H 7X3
(613) 523-7530

Toronto-Ouest
2, promenade Robert Speck
Bureau 310
Mississauga L4Z 1H8
(416) 273-7811

Sault Ste. Marie
390, rue Bay
3e étage
P6A 1X2
(705) 942-8417

Windsor
500, avenue Ouellette
Bureau 305
N9A 1B3
(519) 256-8278

St. Catharines
205, rue King
L2R 3J5
(416) 684-7406

oronto-Centre
Ackroyd, Lynda
Balter, Isreal
Barrett, Janet
Della-Nebbia, Nancy
Gaspar, Fern
Hasan, Zahra
Johnson, Bev
Marchand, Carole
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Obermuller, Diane
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oronto-Est
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Soondarsingh, Vijay

Région de l'Est
* Bourne, Phyllis
Cotton, W. Murray
Dain, Margaret
* Delph, Esther
Kalimootoo, Roxanne
Legault, Thérèse
Maillet, René
Polley, Joe
Richard, Maurice
* Sharples, Nancy
Ushe-Robb, Thoko

Région du Nord
Buffington, Margaret
Fratesi, Debra
Lapalme, Gilles
* Lincourt, Diane
* Owsiany, Mary Ann
Payne, Lynne
Ryan, Lori
* Serpell, Frances
St. Onge, Joanne
Welch, Dan
Wesley, Andrew
* Zack, Leslie

Région du Sud-Ouest
* Barit, Margaret
* Barker, Sheila
Barnes, Dorothy
Blackwood, Calvin
Burns, Walter
Carrick, Anne
Harrington, Rick
Howard, Mary Ann
Koushik, Aruna
* Riberdy, Joyce
Schiller, David
Senay, Diane
* Sylva, Margaret
Wisdom-Lumsden, M.

Région de Hamilton-Niagara
Brick, Jackie
* Fukuzawa, Brian
Giesbrecht, Dennis
Hershorn, Barbara
Jostman, Susan
McSween, Selwyn
* Musheega, Abbey
* Ras, Theresa
Strojin, Anny
Sim, Fiona
Witter, Merv

* Personnel contractuel ou en détachement au 27 février 1989

PERSONNEL DE LA COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

Bureau du commissaire en chef
Villa-Real Alonso, Edna
Cain, Wylie
Douglas, Reata
Singh, Vidya
St. Lewis, Joanne

Bureau du directeur général
Gage, Mike
Jim, Serena

Unité des services juridiques
Campbell, Fiona
Davis, Lillian
Ffolkes-Abrahams, Sharon
Frawley, Mark
Ginsburg, Marilyn
Griffin, Anthony
Molloy, Anne
Rice, Deidre
Rosen, Joanne
* Wilson, Chris
Zucker, Morrie

Unité des finances et de l'administration
Brophey, Brian
Choudhury, Nisha
Jackson, Marilyn
Jeffrey, Elizabeth
* Laporte, Maureen
McKee, Anne
Reynolds, Jessica
Sharp, Bill
Tharrenos, Tia
* Whaley, Catherine
Yatco, Jose

Unité de la recherche et de l'élaboration des politiques
Armstrong, Jill
* Coyne, Debora
Wacyk, Tanja

Unité des enquêtes sur la discrimination systémique
Binstock, Robert
Bhawanie, Stella
Dahlin, Anita
* Downey, Terry
Mahoney, Owen
Ramanujam, Sita
Sequeira, Vera
Whiteside, Anne

Unité de l'observation du Code
Hurley, Helen
Schreiter, Marty

Unité de réexamen
* Edwards, Neil
* Lee, Rose
Svegzda, Laima

Unité de l'éducation et des communications
Justason, Barbara
Kudell, Karin
Shefman, Alan
Silberman, Toni

Cyderman c. York Condominium Corporation

Une décision provisoire de la commission d'enquête traitait dans ce cas deux questions importantes.

Premièrement, l'un des plaignants a fait valoir que l'alinéa 9 a) du Code était contraire aux droits à l'égalité garantis à l'article 15 de la Charte. L'argument des intimés était que la commission d'enquête n'était pas compétente pour décider si une disposition du Code est contraire à la Charte. La commission a répondu que le paragraphe 52 (1) de la Charte lui attribuait cette compétence, puisqu'il incombe à tout organe chargé de reconnaître des droits de prendre ses décisions dans les limites de la protection constitutionnelle de ces droits. Par ailleurs, il existe des raisons pratiques justifiant qu'une commission d'enquête ait le pouvoir de faire appliquer la Charte; cela évite en particulier le fractionnement des questions à l'examen et la reproduction de la preuve. La commission a également jugé approprié qu'une question liée à la Charte soit, en première instance, soumise à un tribunal spécialisé en droits de la personne parce qu'il est ainsi saisi de l'ensemble des faits faisant l'objet de l'instance. Bien que cela n'ait pas été indispensable, la commission d'enquête confirma qu'elle était bien un "tribunal compétent" au sens du paragraphe 24 (1) de la Charte.

Deuxièmement, la commission dut établir si les administrateurs de la société de construction de condominiums pouvaient être personnellement intimés. La commission décida qu'une plainte pouvait intimer les administrateurs et dirigeants responsables de l'action d'une personne morale présumée être en violation du Code. La commission a également noté qu'il n'était pas possible d'intimer "le conseil d'administration", car celui-ci ne constitue ni une personne juridique, ni une "personne" au sens de l'alinéa 45 c) du Code.

RÉVISION JUDICIAIRE

ASSOCIATIONS PROFESSIONNELLES

Sexe
Federation of Women Teachers' Associations of Ontario

Cette plainte, déposée par deux enseignantes, invoquait qu'en les obligeant à adhérer à un syndicat de femmes (la FWTAO) plutôt qu'à un syndicat d'hommes (Ontario Public School Teachers' Federation), le règlement de la Fédération des enseignantes et des enseignants de l'Ontario donnait lieu à une discrimination fondée sur le sexe en matière d'adhésion à un syndicat.

La Commission a soumis le cas à une commission d'enquête.

La FWTAO a demandé une révision judiciaire de la décision de la Commission, requête que la Cour divisionnaire a rejetée avec les observations suivantes :

1. La décision de la Commission ontarienne des droits de la personne de constituer une commission d'enquête en application de l'article 35 du Code est une décision administrative et non quasi judiciaire. La constitution d'une commission d'enquête ne décide en rien des droits des parties.
2. Tout organe créé par la loi qui exerce un pouvoir administratif est tenu d'agir avec impartialité. La Cour a souligné que ce devoir d'impartialité comprend celui d'informer la partie intimée de la nature de l'instance introduite contre elle, de lui faire parvenir un résumé impartial de la preuve pertinente et de lui offrir la possibilité d'y répondre.
3. La FWTAO avait demandé une suspension de l'instance devant la commission d'enquête en attendant que la Cour d'appel se prononce sur la validité constitutionnelle du règlement en question. La Cour divisionnaire a rejeté cette requête en déclarant entre autres qu'il était d'intérêt public que les plaintes déposées aux termes du *Code des droits de la personne*, et donc les instances devant une commission d'enquête, soient réglées avec diligence.

POUVOIR DES TRIBUNAUX D'APPLIQUER LA CHARTE

Cuddy Chicks Ltd. c. la Commission des relations de travail de l'Ontario et al.

Dans le cadre d'une audience relative à une demande d'accréditation syndicale, la Commission des relations de travail de l'Ontario a fait valoir qu'elle était un tribunal compétent au sens du paragraphe 24 (1) de la Charte. Elle a par ailleurs estimé que l'article 52 de la Charte exigeait qu'elle examine si les dispositions de la *Loi sur les relations de travail de l'Ontario* sont conformes à la Charte.

La Cour divisionnaire a confirmé la décision de la Commission des relations de travail de l'Ontario. Elle a jugé que cette dernière devait examiner toutes les lois pertinentes et appliquer celles-ci, y compris la Charte, aux instances introduites devant elle.

BIENS, SERVICES ET INSTALLATIONS

Sexe
Schachter c. Canada

M. Schachter, père naturel d'un nouveau-né, ayant décidé de rester au foyer pour s'occuper de son enfant, fit une demande de prestations aux termes de la *Loi sur l'assurance-chômage*.

La Loi prévoit un congé de maternité pour les mères naturelles et un congé parental pour les parents adoptifs ouvrant droit à des prestations d'assurance-chômage.

M. Schachter a cherché à obtenir que soit reconnu aux pères naturels, en application de l'article 15 de la Charte, le droit à des prestations d'assurance-chômage au titre du congé parental.

Le juge Strayer du tribunal de première instance de la Cour fédérale du Canada a confirmé que la *Loi sur l'assurance-chômage* privait M. Schachter de son droit à l'égalité devant la loi. Le juge a conclu que le système mis en place par la Loi faisait de la discrimination en raison du sexe, dans la mesure où il était basé en partie sur les stéréotypes sexuels applicables aux rôles respectifs de la mère et du père. Le juge n'est pas allé jusqu'à déclarer que tout ou partie de la loi était rendu inopérant; plutôt, il décida qu'il y avait lieu d'accorder au père naturel un congé parental aux mêmes conditions qu'à un parent adoptif.

La Cour d'appel fédérale, saisie de la décision du tribunal de première instance, déclara que celui-ci avait l'autorisation expresse d'ordonner la cessation d'une pratique reconnue comme étant discriminatoire. Il s'ensuit qu'un tribunal qui juge qu'une loi rend obligatoire une pratique discriminatoire injustifiable peut donc rendre une ordonnance empêchant la poursuite de cette pratique.

ASSOCIATIONS PROFESSIONNELLES

Citoyenneté
Andrews c. La société du barreau de la Colombie-britannique

M. Andrews avait demandé à être admis au barreau de la Colombie-britannique; il n'était pas citoyen canadien, mais remplissait tous les autres critères d'admission. Sa demande fut rejetée parce qu'il n'avait pas la citoyenneté canadienne.

M. Andrews chercha à obtenir une déclaration selon laquelle l'exigence relative à la citoyenneté contrevenait à l'article 15 de la Charte. La Cour suprême du Canada a confirmé que tel était le cas, ajoutant que l'article 1 de la Charte ne s'appliquait pas. La Cour fit observer ce qui suit :

- La discrimination est une distinction, intentionnelle ou non, mais fondée sur des motifs relatifs à des caractéristiques personnelles d'un individu ou d'un groupe d'individus, qui a pour effet d'imposer des désavantages non imposés à d'autres, ou d'empêcher ou de restreindre l'accès aux avantages offerts à d'autres membres de la société. Les distinctions fondées sur des caractéristiques personnelles attribuées à un seul individu en raison de son association avec un groupe sont presque toujours taxées de discriminatoires, alors que celles fondées sur les mérites et capacités d'un individu le sont rarement.
- Les motifs de discrimination énumérés au paragraphe 15 (1) ne sont pas exhaustifs. Les motifs analogues à ceux énumérés sont également visés et il se peut même que la disposition soit plus générale que cela, bien qu'il ne soit pas nécessaire, en l'espèce, de répondre à cette question étant donné que le motif invoqué tombe dans la catégorie des motifs analogues.

BIENS, SERVICES ET INSTALLATIONS

État matrimonial et état familial
Procureur général du Canada c. Druken et al.

M^me^ Druken, salariée de son mari, s'est vu refuser des prestations d'assurance-chômage parce que les personnes employées par leur conjoint en sont exclues aux termes de la *Loi sur l'assurance-chômage et du règlement qui en découle.*

M^me^ Druken a porté plainte pour discrimination en matière de services, fondée sur l'état matrimonial, en violation de la *Loi canadienne sur les droits de la personne.*

Le tribunal canadien des droits de la personne, ayant conclu que la loi était discriminatoire, a ordonné à la Commission de l'emploi et de l'immigration du Canada de ne plus appliquer les dispositions de la Loi et des règlements incriminées.

APPELS

EMPLOI

Âge
McKinney c. l'université de Guelph

La Cour d'appel de l'Ontario a examiné la question de la retraite obligatoire pour les enseignants et les bibliothécaires des universités de l'Ontario.

La Cour a conclu à l'unanimité que l'alinéa 9 a) du *Code des droits de la personne* de l'Ontario, qui réserve la protection contre la discrimination en raison de l'âge aux personnes âgées entre 18 et 65 ans, est incompatible avec l'article 15 de la Charte.

La plupart des magistrats s'accordèrent à dire que l'alinéa 9 a) imposait au droit garanti à l'article 15 de la Charte une restriction raisonnable et manifestement justifiable dans une société libre et démocratique. Le juge Blair, d'opinion dissidente, a fait valoir que non seulement l'alinéa 9 a) du Code était incompatible avec l'article 15 de la Charte, mais que sa justification ne pouvait pas se démontrer comme l'exige la Charte dans son premier article.

Cette affaire a été renvoyée en appel devant la Cour suprême du Canada.

Croyance
Roosma et al. c. Ford Motor Co. et al. (décision provisoire)

Au début de l'audience, la commission d'enquête prit un certain nombre de décisions sur les objections préliminaires soulevées par les intimés, qui interjetèrent appel de ces décisions auprès de la Cour divisionnaire.

Sur motion de la Commission, la Cour divisionnaire a rejeté les appels, faisant valoir que la possibilité d'appeler d'une décision en vertu de l'article 41 du Code ne s'appliquait qu'aux décisions finales de la commission d'enquête. La Cour a souligné que l'application du Code doit se faire avec diligence, ce qui exclut la possibilité d'interjeter appel de décisions provisoires.

parce qu'il est ainsi saisi de l'ensemble des faits faisant l'objet de l'instance. Bien que cela n'ait pas été indispensable, la commission d'enquête confirma qu'elle était bien un "tribunal compétent" au sens du paragraphe 24 (1) de la Charte.

Deuxièmement, la commission dut établir si les administrateurs de la société de construction de condominiums pouvaient être personnellement intimés. La commission décida qu'une plainte pouvait intimer les administrateurs et dirigeants responsables de l'action d'une personne morale présumée être en violation du Code. La commission a également noté qu'il n'était pas possible d'intimer "le conseil d'administration", car celui-ci ne constitue ni une personne juridique, ni une "personne" au sens de l'alinéa 45 c) du Code.

CAS SIGNIFICATIFS POUR LES QUESTIONS DE DROITS DE LA PERSONNE

EMPLOI

État matrimonial
Cashin c. Radio-Canada

M^me^ Cashin, auteure et animatrice pour la radio à Radio-Canada en Terre-Neuve, a perdu son emploi à la suite de la nomination de son mari, un notable de la province, au conseil d'administration de Petro Canada. M^me^ Cashin réagit en déposant auprès de la Commission canadienne des droits de la personne une plainte de discrimination en matière d'emploi, fondée sur l'état matrimonial.

Radio-Canada répondit que s'il y avait eu discrimination, elle n'avait rien à voir avec l'état matrimonial de M^me^ Cashin en tant que tel, mais avec l'identité de son mari. Aussi, selon Radio-Canada, si la mesure prise pouvait être qualifiée de discriminatoire, elle était cependant justifiée parce qu'il est possible d'établir de *bonne foi* une exigence d'objectivité pour les activités professionnelles d'une personnalité de la radio.

La Cour d'appel fédérale a déclaré que la Loi sur les droits de la personne avait pour objet de veiller à ce que chacun soit jugé selon ses propres mérites. Il avait été prouvé que la politique de Radio-Canada, préjudiciable aux femmes qui prennent le nom de leur mari, entraînait une discrimination fondée sur l'état matrimonial.

La Cour a rejeté l'argument de défense avancé par Radio-Canada, à savoir que l'exigence professionnelle avait été établie de bonne foi, en concluant que le test utilisé pour mesurer le respect de cette exigence comprenait autant de composantes subjectives qu'objectives. Dans le cas présent, Radio-Canada ne s'était basée sur rien de plus qu'une supposition que les auditeurs pourraient douter de l'objectivité de M^me^ Cashin. Aux termes d'un test utilisé par la Cité d'Etobicoke, des preuves aussi floues ne sont pas acceptables comme composante objective permettant de juger d'un manquement à une exigence professionnelle établie de *bonne foi*.

Harcèlement en raison de la religion
Dufour, Charron et Demers c. J. Roger Deschamps, comptable agréé et Deschamps

La commission d'enquête a confirmé le bien-fondé de deux des trois plaintes pour harcèlement en raison de la religion, qualifiant de "grave atteinte à la dignité de la personne concernée" et de "dénégation du respect égalitaire essentiel à l'existence d'une société démocratique et libérale" la discrimination ou le harcèlement fondé sur la religion. Bien que les intimés n'aient pas ouvertement exigé de leurs employés qu'ils s'adonnent à leurs pratiques religieuses, l'atmosphère de religiosité qui régnait au travail était suffisante pour constituer une violation du Code.

La commission a rejeté la possibilité pour un employeur de se disculper en affirmant que ses commentaires étaient de nature strictement moralisatrice : ce serait aller à l'encontre de l'objet protecteur du paragraphe 4 (2) du Code que de tolérer qu'un employeur fasse passer pour morales les valeurs indéniablement religieuses qu'il essaye d'imposer à ses employés. Ayant le pouvoir de modifier la situation économique de leurs employés, les employeurs doivent scrupuleusement éviter de profiter des relations de travail pour exercer sur eux des pressions importunes. De par l'inégalité de ce rapport dans les relations qui les unissent, un travailleur n'a pas à faire savoir à son employeur qu'il n'apprécie pas ses commentaires ou sa conduite pour bénéficier de la protection prévue aux termes du Code; il suffit en principe que ses collègues aient dit ou fait quelque chose qui donne à l'employeur une indication raisonnablement claire que son attitude est importune. Par conséquent, une fois que le plaignant a prouvé que tel était le cas, le fardeau de la preuve passe à l'employeur, qui doit démontrer que le plaignant a en fait sollicité la conduite incriminée.

En complément de la décision relative à l'article 4 du Code, la commission d'enquête a traité de la disposition relative aux dépens au paragraphe 40 (6) du Code; elle a noté que ce ne serait que dans des circonstances très inhabituelles qu'elle ordonnerait à la Commission de payer les dépens. Dans le cas présent, la preuve n'établit aucune négligence ou inconvenance de la part de la Commission dans le cadre de l'enquête et du suivi des plaintes; une condamnation aux dépens n'était donc pas justifiée.

LOGEMENT

Âge
Cyderman c. York Condominium Corporation

Une décision provisoire de la commission d'enquête traitait dans ce cas deux questions importantes.

Premièrement, l'un des plaignants a fait valoir que l'alinéa 9 a) du Code était contraire aux droits à l'égalité garantis à l'article 15 de la Charte. L'argument des intimés était que la commission d'enquête n'était pas compétente pour décider si une disposition du Code est contraire à la Charte. La commission a répondu que le paragraphe 52 (1) de la Charte lui attribuait cette compétence, puisqu'il incombe à tout organe chargé de reconnaître des droits de prendre ses décisions dans les limites de la protection constitutionnelle de ces droits. Par ailleurs, il existe des raisons pratiques justifiant qu'une commission d'enquête ait le pouvoir de faire appliquer la Charte; cela évite en particulier le fractionnement des questions à l'examen et la reproduction de la preuve. La commission a également jugé approprié qu'une question liée à la Charte soit soumis en première instance à un tribunal spécialisé en droits de la personne

EMPLOI

Handicap
Belliveau c. Steel Company of Canada

Cette décision repose sur une analyse détaillée du fait qu'aux termes du code, il incombe à l'employeur qui refuse d'embaucher une personne handicapée ou de maintenir son emploi de prouver qu'il agit dans le respect de la loi. La commission d'enquête a conclu que le fait de croire sincèrement qu'une personne n'est pas capable d'effectuer les tâches essentielles d'un emploi ne suffit pas pour satisfaire aux exigences du Code. L'employeur doit en plus prouver de manière objective qu'une personne raisonnable mise à sa place arriverait elle aussi à la conclusion que la personne handicapée est dans l'incapacité d'accomplir les tâches en question. De surcroît, cette incapacité ne serait établie que si l'employeur arrive à démontrer qu'il est impossible de tenir compte des besoins de l'employé ou que d'en tenir compte entraînerait pour lui un préjudice injustifié.

La commission a également souligné que le Code met clairement l'employeur dans l'obligation de tenter d'obtenir des renseignements susceptibles de l'aider à tenir compte des besoins des employés handicapés, qui, pour leur part, sont dans une certaine mesure tenus de divulguer tous les renseignements pertinents. Néanmoins, dans le cas présent, même si "le plaignant avait, par sa propre négligence, tardé à faire la pleine lumière sur son état de santé", ce qui fait de lui le "principal responsable" du refus de l'intimé de le réintégrer, la commission a maintenu que l'intimé avait manqué à ses obligations aux termes du Code. Le plaignant a obtenu des dommages-intérêts, malgré la décision de la commission voulant que Stelco avait des motifs raisonnables de le croire incapable pour raison de santé.

Harcèlement sexuel
Hall c. Sonap Canada et Torimiro

La commission d'enquête a confirmé le bien-fondé d'une plainte pour harcèlement sexuel déposée par l'une des jeunes femmes employées par l'intimé dans le cadre d'un programme de formation professionnelle subventionné. La commission a conclu que l'intimé avait créé un climat nettement préjudiciable et oppressant pour ses employées, par ses commentaires sur leur apparence et leur vie intime, ses attitudes et attouchements, et ses invitations à déjeuner en tête-à-tête et à faire des promenades en voiture.

La commission a fait remarquer que l'intimé avait une responsabilité spéciale envers ses jeunes stagiaires et qu'un homme du monde sophistiqué tel que lui devait savoir quel climat il créait. La commission ordonna à l'intimé de verser, en plus de dommages-intérêts spéciaux, des dommages-intérêts généraux de 1 500 $ en reconnaissance de la responsabilité spéciale que les employeurs et leurs représentants ont envers leurs employés, puisqu'ils définissent la nature du travail et créent le climat dans lequel il est exécuté. La commission a déclaré que les employés ont le droit d'être traités avec bienséance dans l'exécution de leurs tâches et de ne pas être soumis à des pressions qui n'ont rien à voir avec leur travail, mais plutôt avec leur sexe.

Croyance
Sehdev c. Bayview Glen Junior Schools

Cette décision, qui portait sur la prise en compte des pratiques religieuses d'un élève, a confirmé l'obligation de tenir compte des besoins de groupes particuliers, sauf préjudice injustifié, même lorsque les modifications récentes apportées au Code à cet égard ne s'appliquent pas. La commission d'enquête a conclu que les intimés avaient violé les articles 1 et 10 du Code en imposant le port d'un uniforme à tous les élèves sans exception avec l'interdiction de porter les cheveux longs ou d'autres signes extérieurs de croyance. Cette règle eut pour effet de refuser la fréquentation de l'école à certains élèves sur la base de leur croyance; l'article 17 du Code, qui permet à des groupements sélectifs de poursuivre leurs intérêts particuliers, ne dégage pas les intimés de leur responsabilité quant à l'effet discriminatoire de cette règle. La commission a constaté par ailleurs que l'école avait pour philosophie officielle de promouvoir la tolérance et une attitude respectueuse envers toutes les religions et pourtant, en refusant la moindre dérogation au code vestimentaire, les intimés pratiquaient, par inadvertance sans doute, mais de manière non moins désobligeante, une discrimination fondée sur la croyance. La commission a fait remarquer que l'article 17 ne constituait pas une exemption générale pour les écoles privées, mais que l'intention du législateur était de permettre à des groupements sélectifs de personnes de poursuivre leurs intérêts particuliers. L'article 17 permet sans nul doute à un groupement sélectif d'adopter une politique discriminatoire envers les personnes externes au groupe dans le but d'établir une certaine identité. Cette identité doit cependant être définie de manière positive, en ce sens qu'elle ne doit permettre que de servir les intérêts de personnes identifiées par un motif illicite de discrimination. Selon la commission, une modification mineure à la règle vestimentaire pour les élèves tels que le plaignant, un Sikh pratiquant qui porte un turban, ne remettrait aucunement en cause les objectifs de l'école.

Race et couleur
Sheperd c. Bama Artisans

Dans cette affaire, l'intimé tenta de faire appliquer l'article 11 de la Charte des droits et libertés. La commission d'enquête a rejeté les trois objections préliminaires présentées par les avocats de l'intimé relativement au délai de la procédure et confirma les allégations de discrimination fondée sur la race et la couleur. L'une des objections invoquait l'alinéa 11 b) de la Charte, qui garantit à toute personne inculpée le droit d'être jugée dans un délai raisonnable. S'appuyant sur les nombreuses décisions établissant que les instances devant les commissions d'enquête sont strictement civiles et compensatoires, la commission a purement et simplement rejeté l'argument voulant que l'intimé pouvait être assimilé à un inculpé.

DÉCISIONS PRISES PAR LES COMMISSIONS D'ENQUÊTE ET LES TRIBUNAUX EN 1988-1989

BIENS, SERVICES ET INSTALLATIONS

Handicap
Tammy McLeod c. Youth Bowling Council of Ontario

Dans cette affaire, la commission d'enquête a estimé que la règle mise à exécution par l'intimé selon laquelle le lancer de la boule devait être entièrement manuel constituait une discrimination indirecte fondée sur un handicap. Tammy McLeod, âgée de onze ans lors de l'audience, est atteinte d'infirmité motrice cérébrale qui limite ses mouvements, sa coordination et son usage de la parole. Aidée d'une simple rampe de bois, Tammy joue régulièrement au bowling et se mesure avec succès à ses camarades. En 1985, Tammy s'était inscrite à un tournoi de bowling, mais elle fut disqualifiée à cause de son recours à la rampe de bois. Devant la commission d'enquête, la Commission présenta des témoignages d'experts selon lesquels non seulement la rampe ne donnait à Tammy aucun avantage sur les autres joueurs mais que, dans l'ensemble, malgré cet accessoire, Tammy avait de moindres chances de gagner.

Dans sa décision, la commission d'enquête rejeta l'assertion de l'intimé que Tammy ne devrait participer qu'à des tournois l'opposant à des personnes atteintes de handicaps semblables au sien. La commission souligna que la ségrégation des enfants handicapés était inacceptable et que, de toutes façons, elle avait constaté qu'il ne semblait pas y avoir de ligue équivalente pour personnes handicapées. La commission rejeta également l'argument voulant que la règle en question était raisonnable et qu'elle avait été établie de bonne foi, le jeu de Tammy ne pouvant pas être qualifié de bowling au véritable sens du terme et sa participation au tournoi nuisant à la compétition des autres enfants. La commission fit valoir que la notion de compétition, bien qu'essentielle à beaucoup d'activités sportives, ne devait pas servir à en exclure les personnes dont les aptitudes sont différentes. Les personnes obligées, de par leur handicap, à adapter l'exercice d'un sport doivent pouvoir participer à des tournois en autant que les adaptations effectuées ne décident pas l'issue de la compétition en leur faveur. Tammy était désavantagée par rapport aux autres joueurs, par conséquent l'issue de la compétition n'était pas compromise pour ces derniers.

La commission ordonna à l'intimé d'autoriser Tammy à participer à des tournois avec ses camarades et d'exempter les personnes handicapées de la règle de jeu générale interdisant le recours à des accessoires mécaniques. De plus, la décision prévoyait 2 000 $ de dommages-intérêts en faveur de Tammy pour les souffrances morales que lui avait valu la discrimination. Les intimés ont interjeté appel.

dentaire la prestation de services à des personnes atteintes du sida. Les personnes interrogées s'accordaient à dire qu'il n'y en avait aucun, le risque de transmission du virus HIV étant infime dans pareilles circonstances.

La Commission a effectué des recherches complémentaires, en collaboration avec le comité du sida de Toronto, qui l'ont amenée à conclure qu'il était très difficile de séparer du reste de la population les porteurs du virus HIV réels ou potentiels. Partant du principe que tous les patients sont potentiellement contagieux, la meilleure politique à adopter est une politique de "précautions universelles" en vertu de laquelle toute personne prodigant des soins doit se protéger contre les maladies infectieuses. Telle est également l'attitude préconisée par Santé et Bien-être Canada et le Centre for Disease Control à Atlanta, en Géorgie.

La Commission ayant réussi à concilier les parties, l'hôpital s'est engagé à instaurer dans tous ses services une politique de précautions universelles pour les employés qui entrent en contact avec les substances corporelles des patients, et à offrir une gamme complète de soins dentaires aux personnes atteintes du sida ou porteuses du virus HIV.

LOGEMENT

Handicap
Comité du SIDA d'Ottawa

La Commission a approuvé une entente entre le Comité du SIDA d'Ottawa (CSO) et un locateur de la même ville en règlement d'une plainte, déposée par un particulier au nom du CSO, portant sur la discrimination en matière de logement fondée sur un handicap.

Selon le plaignant, le locateur intimé avait refusé de louer un local à bureaux au CSO sous prétexte que ses activités étaient liées au sida et à des personnes atteintes de cette maladie. Selon le plaignant, la position du locateur était attribuable au fait que d'autres locataires de l'immeuble avaient demandé à ne pas être forcés de partager des locaux ou des toilettes avec des personnes atteintes du sida ou susceptibles de l'être. Les plaignants n'étaient pas satisfaits du compromis offert par le locateur, à savoir de construire des toilettes séparées dans les bureaux réservés au CSO.

Pour régler la question, l'intimé, sans pour autant admettre de responsabilité ou de méfait, a consenti à présenter des excuses pour outrage à la dignité et à verser 8 000 $ au CSO et 1 000 $ à la personne ayant déposé la plainte.

BIENS, SERVICES ET INSTALLATIONS

Handicap
Mary McLaughlin c. Niagara Falls Union Centre et London Life Insurance Co.

La plaignante était employée par Niagara Falls Union Centre. Depuis septembre 1986, London Life refusait de faire bénéficier M^me^ McLaughlin de l'assurance-groupe souscrite par son employeur. En effet, la plaignante souffre d'angine de poitrine et l'assureur considère qu'elle présente des risques élevés. La plaignante faisait valoir qu'elle prenait des médicaments pour contrôler son angine et que, de ce fait, elle ne présentait pas de risque particulier.

L'assureur intimé nia toute violation du Code, affirmant qu'il avait agi de manière raisonnable et *de bonne foi* en application de l'article 21 du Code. Le contrat initial entre l'assureur et l'employeur intimé couvrait 10 personnes mais, après ratification d'un nouveau contrat, le nombre de personnes couvertes était inférieur. S'appuyant sur l'ouvrage de Brackenridge, *Medical Selection of Life Risks*, où il est dit que les maladies cardiaques restent la principale cause de décès, l'assureur intimé répéta son allégation que la plaignante présentait des risques élevés du fait de son angine.

Les parties s'entendirent à l'amiable. La plaignante fut réintégrée avec protection rétroactive dans l'assurance-groupe offerte par la London Life. L'assureur consentit à offrir la protection à compter de mars 1988, tandis que l'employeur accepta de lui verser les primes rétroactives jusqu'à cette date pour le compte de la plaignante à titre d'indemnité pour la période pendant laquelle elle n'était pas assurée. La plaignante quant à elle reconnut que son employeur lui avait fourni une assurance médicale à l'occasion d'une maladie survenue après son exclusion de l'assurance-groupe, et qu'il s'était efforcé de la faire réintégrer dans cette dernière. M^me^ McLaughlin retira la plainte contre son employeur.

Handicap
The Toronto Hospital

À la suite d'une plainte déposée par une personne atteinte du sida qui avait cherché à obtenir des soins dans sa clinique dentaire, l'hôpital de Toronto s'est engagé à prendre des mesures concrètes dans le cadre d'une politique de prévention de la propagation des maladies infectieuses et à offrir davantage de services de soins dentaires aux personnes atteintes du sida ou porteuses du virus HIV. Le plaignant prétendait avoir été informé par le dentiste de la clinique que la politique de l'hôpital était de ne pas fournir de plombages permanents ni de polissage des dents aux personnes atteintes du sida parce que ces interventions devaient se faire au moyen d'instruments à haute vélocité. Ces instruments produisent un crachin de sang et de salive dont on présume qu'il pose un risque pour le dentiste et les autres patients. Le dentiste a par ailleurs informé le plaignant que certaines interventions non essentielles ou cosmétiques n'étaient pas non plus effectuées sur des personnes atteintes du sida ou porteuses du virus HIV.

Le plaignant faisait valoir que la politique de l'hôpital le privait de son droit à un traitement égal quant aux services en raison de son handicap.

Au cours de son enquête, la Commission consulta des experts médicaux sur le danger que pose pour les autres patients et les professionnels d'une clinique

Race, couleur, sexe, ascendance, lieu d'origine, origine ethnique; représailles; harcèlement en raison d'une association
Buxton, Lee, MacArthur, Spanks et Moledina c. Majestic Electronics Stores, Inc. et Ramsauer

Les cinq plaignants alléguèrent que la discrimination était généralisée dans les magasins Majestic Electronics Stores et qu'il y avait eu atteinte à leur droit à un traitement égal au travail garanti par le Code.

M^me^ Moledina, hindoue, donna sa démission après avoir appris qu'elle devait être renvoyée à cause de sa race et de sa couleur.

Les plaignants prétendirent que M. Ramsauer faisait des remarques grossières au sujet de personnes de races différentes, avait donné des instructions aux gérants de ses magasins de ne pas embaucher de femmes ni de membres des minorités visibles. Les plaignants de sexe masculin, amenés de par leurs fonctions à embaucher et à licencier du personnel, soutenaient qu'ils avaient eux-mêmes été menacés de licenciement et de représailles s'ils refusaient d'adopter une attitude discriminatoire à l'encontre des autres employés en raison de leur race, couleur, sexe, ascendance, lieu d'origine ou origine ethnique; par ailleurs, ils affirmaient qu'il y avait eu violation de leur droit d'être libre d'agir sans discrimination ou harcèlement au travail en raison de leurs liens, leur association et leurs transactions professionnelles avec des personnes qui se distinguent par l'un des motifs de discrimination mentionnés plus haut.

Une commission d'enquête a été constituée; toutefois, les parties sont arrivées à un règlement avant l'audience. Ce règlement prévoyait entre autres :

- des lettres d'excuses;
- le versement aux cinq plaignants de dommages-intérêts spéciaux totalisant 253 796 $;
- le versement, par M. Ramsauer personnellement, de 8 000 $ en dommages-intérêts généraux à chacun des plaignants;
- l'assurance que Majestic embauchera désormais des femmes et des membres des minorités visibles en proportion directe au nombre de demandes d'emploi reçues de ces groupes par rapport au nombre total de candidatures;
- l'organisation, au sein de la société, de deux séances éducatives annuelles animées par un membre de la Commission ontarienne des droits de la personne et ce pour les trois années à venir, avec l'obligation, pour M. Ramsauer, d'assister à chacune de ces séances;
- la mention, dans les offres d'emploi de la société, que "Majestic Electronics Stores offre des chances égales d'emploi";
- la publication d'offres d'emploi dans des journaux à grande circulation parmi les membres des minorités visibles en proportion égale aux annonces publiées dans les quotidiens;
- l'inclusion de femmes et de membres des minorités visibles dans toute publicité projetant l'image des employés de Majestic;
- l'embauche d'un coordonnateur ou d'une coordonnatrice de l'équité d'emploi pour une période de trois ans;
- enfin, la compilation de statistiques détaillées sur le personnel de Majestic pour présentation à la Commission des droits de la personne.

Handicap
Lentz c. The Toronto Hospital (Toronto Western Hospital)

M. Lentz prétendait qu'il avait été embauché par l'hôpital Toronto Western le 4 janvier 1988 et licencié 19 jours plus tard parce qu'il était atteint du sida. L'enquête a révélé qu'il avait bel et bien été licencié à cause de sa maladie. Une commission d'enquête a été constituée, mais le litige a été réglé à l'amiable avant l'audience. Le règlement prévoyait la réintégration de M. Lentz à son poste d'infirmier à l'hôpital Toronto Western et le versement de tous ses arriérés de salaire et avantages sociaux, ainsi que le rétablissement de son ancienneté et une contribution substantielle à ses frais juridiques.

Race, couleur, handicap et harcèlement en raison de la race
Khan c. H. & O. Centerless Grinding, Ladouceur

M. Khan, un Hindou originaire de la Guyane, fut embauché par la société intimée en 1973 comme adjoint au superviseur de l'entretien. En 1981, M. Ladouceur accéda au poste de superviseur de ce service. Plusieurs années plus tard, M. Khan, qui souffre du dos, demanda l'aide de M. Ladouceur pour lubrifier les machines. Selon lui, M. Ladouceur avait non seulement refusé, disant que "la lubrification, c'est un boulot de nègre", mais l'avait menacé physiquement. Il ajouta que la direction, qui ne prit aucune mesure à la suite de l'insulte, le congédia pour n'avoir pas fait son travail. La plainte portait sur la discrimination au travail fondée sur la race, la couleur et un handicap, de même que sur le harcèlement en raison de la race.

L'enquête a confirmé ces accusations. Le plaignant avait été hospitalisé pour des troubles de dos avant la période prévue pour la lubrification annuelle des machines, mais aucune mesure n'avait été prise pour tenir compte de son handicap. M. Ladouceur avoua avoir proféré l'insulte mentionnée.

En règlement, la société intimée s'engagea à :

- ☐ verser au plaignant 8 000 $ (moins retenues légales) à titre d'indemnité pour perte de salaire et 2 000 $ à titre de dommages forfaitaires;
- ☐ joindre à la feuille de paye de tous ses employés un énoncé de politique dénonçant les injures à connotation raciale et les remarques désobligeantes en général;
- ☐ organiser des séminaires sur les droits de la personne pour ses dirigeants, ses cadres et ses chefs de service;
- ☐ veiller à l'avenir au respect du Code;
- ☐ de plus, M. Ladouceur adressa une lettre d'excuses au plaignant.

Ce règlement a été obtenu sans que les intimés aient reconnu leur responsabilité.

Handicap
Hopkins c. Swire Enterprises Ltd.

La plaignante, qui souffre d'épilepsie, dit qu'elle occupait depuis plusieurs semaines un poste d'apprenti gérant-adjoint dans la société intimée lorsqu'elle demanda une pause de 10 minutes parce qu'elle croyait être sur le point de faire une crise. Dans sa plainte, elle prétendit avoir été licenciée dès que son employeur apprit l'incident.

Durant l'enquête, l'employeur témoigna qu'il avait licencié la plaignante par égard à sa sécurité, le lieu de travail en question étant un restaurant où les employés travaillent à proximité d'aliments chauds et d'huile bouillante. L'intimé a également fait valoir que M^me^ Hopkins avait pris des congés de maladie. L'enquête a révélé que l'intimé n'avait fait aucun effort pour tenir compte des besoins de la plaignante et n'avait pas non plus respecté son désir de garder son emploi malgré les risques qu'elle encourait.

La conciliation entre les parties s'est faite aux conditions suivantes :

- ☐ les intimés versent à la plaignante, à titre d'indemnité pour perte de salaire et souffrances morales, la somme de 3 000 $;
- ☐ les intimés donnent à la Commission, par écrit, l'assurance que leurs pratiques sont conformes au Code et ne violent aucun des droits qui y sont garantis;
- ☐ les intimés affichent, bien en vue, dans chacune de leurs succursales, les cartes de "Déclaration de la direction" publiées par la Commission;
- ☐ les intimés prévoient une période pendant laquelle la Commission peut organiser un ou plusieurs séminaires destinés à tous les employés cadres et portant sur les dispositions et les principes du Code;
- ☐ malgré ce règlement, les intimés ne sont pas réputés avoir reconnu leur responsabilité.

Handicap
Clarke c. La Police provinciale de l'Ontario

M. Clarke, un agent de la police provinciale de l'Ontario, a obtenu sa réintégration sans condition à son poste de constable stagiaire en règlement de sa plainte de discrimination en matière d'emploi fondée sur un prétendu handicap. L'enquête a fait apparaître que M. Clarke avait eu une attaque lors de la cérémonie de remise des diplômes qui clôturait le processus d'embauche, lequel comportait un cours d'orientation de trois semaines. Quelques semaines plus tard, M. Clarke a été congédié pour cause d'épilepsie présumée.

La Commission saisit une commission d'enquête de cette plainte. Le règlement issu de plusieurs jours d'audience prévoyait le versement de 28 000 $ à M. Clarke, soit environ un an de salaire, en plus de sa réintégration. À la fin de sa période d'essai, M. Clarke s'est vu attribuer une année supplémentaire d'ancienneté.

Sexe

La Commission ontarienne des droits de la personne c. Metropolitan Stores Ltd.

La Commission a déposé une plainte contre Metropolitan Stores Ltd. pour cause de discrimination envers les femmes aux échelons supérieurs de la hiérarchie. La Commission soutenait que les politiques, pratiques et procédures de la société, et notamment le recours à la presse pour combler les postes de cadres, étaient de nature à favoriser l'embauche d'un nombre disproportionné de postulants de sexe masculin. La Commission a également avancé que les méthodes de sélection internes de la société portaient à croire que seules les femmes devaient faire leurs preuves aux échelons inférieurs de la hiérarchie avant de pouvoir participer au programme d'apprenti-gérant.

Une enquête et des démarches de conciliation ont abouti à un règlement. La société s'est engagée à instaurer l'équité d'emploi en mettant en oeuvre un programme spécial visant à augmenter le nombre de femmes cadres et à offrir aux employés en poste la possibilité de briguer des postes de direction.

L'entente porte également sur le contrôle, deux ans durant, des candidatures aux postes vacants, pour mesurer les progrès de la société en matière d'équité d'emploi; le contrôle sera coordonné par la société elle-même. La Commission devra recevoir tous les six mois un rapport sur les observations effectuées.

Enfin, Metropolitan Stores Ltd. s'est engagée à adopter une politique des droits de la personne; celle-ci sera insérée dans le manuel de gestion du personnel de la société et affichée par toutes ses succursales de l'Ontario dans les bureaux et les salles de repos du personnel.

Sexe

Dunn c. la Brasserie Amstel Canada Limitée

Une plainte invoquant la violation d'un règlement a été déposée par Phyllis Dunn contre la Brasserie Amstel Canada Limitée et a donné lieu à la constitution d'une commission d'enquête.

M^me^ Dunn avait, pour la première fois en 1984, porté plainte contre la société pour cause de discrimination fondée sur le sexe. Les parties étaient parvenues l'année suivante à une entente approuvée par la Commission. Le règlement prévoyait entre autres l'offre d'un emploi syndiqué à la plaignante.

Embauchée comme employée saisonnière pour l'été 1986, M^me^ Dunn fut licenciée au mois d'août. Elle soutient dans sa nouvelle plainte qu'elle aurait dû être embauchée comme employée syndiquée avec priorité de réemploi.

Avant que l'affaire ne fasse l'objet d'une audience, les parties ont convenu du règlement suivant :

- ☐ l'intimé verse à la plaignante la somme de 10 000 $ à titre de règlement global;
- ☐ la plaignante est officiellement embauchée et son nom placé sur la liste d'ancienneté de l'unité de négociation correspondant à son poste, avec une ancienneté calculée à partir du 16 septembre 1986. Elle obtient tous les droits et avantages dont elle aurait dû bénéficier en vertu de la convention collective en vigueur à cette date et en vertu de toute convention ultérieure.

L'intimé a par ailleurs consenti à mettre sur pied un programme spécial pour augmenter la proportion des femmes parmi ses employés.

Harcèlement sexuel

La plaignante, qui a travaillé pendant 13 mois comme réceptionniste et coordonnatrice des comptes pour l'intimé, une agence de publicité, déclarait dans sa plainte avoir subi, pendant toute la durée de son emploi, des remarques désobligeantes à connotation sexuelle, des questions sur sa vie intime et des insinuations obscènes quant à sa moralité. Elle ajoutait que le milieu de travail était devenu si hostile qu'elle avait trouvé impossible d'y demeurer et qu'elle avait de ce fait donné sa démission.

Une enquête a permis d'arriver à un règlement aux termes duquel la plaignante a reçu 400 $ pour perte de salaire et 1 100 $ à titre d'indemnité pour souffrances morales. L'intimé a donné à la plaignante une lettre de recommandation et a fait circuler parmi ses employés l'énoncé d'une politique dénonçant le harcèlement sexuel.

EXEMPLES DE CAS RÉGLÉS EN 1988-1989

EMPLOI

Sexe

La Commission ontarienne des droits de la personne c. le Conseil de l'éducation de Peel et le Syndicat canadien de la fonction publique (sections locales 2544/2703)

Après avoir examiné des renseignements portés à sa connaissance, la Commission a porté plainte contre les sections locales 2544 et 2703 du Syndicat canadien de la fonction publique et le Conseil de l'éducation de Peel pour cause de discrimination en matière d'emploi, fondée sur le sexe. Jusqu'à l'an dernier, la section locale 2544 n'avait que des hommes pour membres et l'élément masculin reste encore très largement majoritaire. L'effectif de la section locale 2703 est entièrement féminin.

Les plaintes faisaient valoir que les politiques et pratiques d'embauche et de promotion issues d'une négociation collective entre le Syndicat et le Conseil garantissaient de meilleures conditions d'emploi aux préposés à l'entretien à plein temps (principalement des hommes) qu'aux préposés à temps partiel (principalement des femmes).

Ces conditions se rapportaient à la rémunération, aux avantages sociaux, aux congés de maladie, à l'affichage des postes à combler, à la protection de l'ancienneté, à la sécurité d'emploi et aux procédures de grief.

En règlement des plaintes, les sections locales 2703 et 2544 acceptèrent de fusionner et d'adopter à compter du 30 juin 1989 une seule et même convention collective. L'accord intervenu prévoit aussi ce qui suit :

- ☐ le raccordement des listes d'ancienneté des deux sections locales, l'ancienneté étant calculée à partir de la première date d'embauche;
- ☐ une année de travail de 12 mois pour tous les employés (l'année de travail des préposés féminins était auparavant limitée à 10 mois);
- ☐ un accord entre le Conseil et la Commission sur l'égalité des chances, visant à faire disparaître la ségrégation des emplois et à améliorer la promotion des femmes, notamment au moyen d'une nouvelle classification des emplois. Cet accord constitue un programme spécial aux termes du Code;
- ☐ un programme de formation spécial pour faciliter aux femmes l'accès à de nouveaux emplois;
- ☐ une augmentation immédiate et rétroactive pour 50 pour 100 des préposés à l'entretien désormais classifiés comme "préposés à temps partiel aux écoles", qui est le niveau d'entrée des nouveaux employés des deux sexes. Le nouveau salaire s'élève à 81 pour 100 de celui de la catégorie suivante ("gardiens adjoints"). Il s'agit là d'une hausse considérable;
- ☐ un accord prévoyant le contrôle des pratiques d'emploi du Conseil pendant deux ans.

Cet accord, dont le coût estimatif se situe entre quatre et six millions de dollars, sera mis en application sur une période de quatre ans.

UNITÉ DES SERVICES JURIDIQUES

Directrice : Anne M. Molloy

L'Unité des services juridiques, créée l'an passé, est indépendante du ministère du Procureur général. Ses services s'adressent au personnel et aux membres de la Commission.

Les membres de l'Unité contribuent aux processus d'enquête et de conciliation en donnant des conseils juridiques aux agents et aux chefs de services des bureaux régionaux. Ils consacrent une grande partie de leur temps à la formulation d'opinions juridiques au sujet des plaintes sur lesquelles la Commission est amenée à statuer, en particulier lorsque l'une des parties demande la constitution d'une commission d'enquête. Ils participent aux réunions de la Commission, où ils donnent au besoin leur avis juridique sur les décisions prises par celle-ci.

Les membres de l'Unité font oeuvre de conseillers juridiques de la Commission devant les tribunaux et les commissions d'enquête dans les instances de révision judiciaire et d'appel.

Les tribunaux canadiens ont rendu l'année passée plusieurs jugements importants dans le domaine des droits de la personne.

Un condensé de plusieurs cas ayant abouti à des règlements importants figure ci-après; certains ont donné lieu à la constitution d'une commission d'enquête, d'autres ont fait l'objet d'une révision judiciaire ou d'un appel, d'autres encore relevaient d'une compétence territoriale autre que l'Ontario.

UNITÉ DE L'ÉDUCATION ET DES COMMUNICATIONS

Directeur : Alan Shefman

Toute action à long terme en matière de défense des droits de la personne et de lutte contre la discrimination passe obligatoirement par un solide programme d'éducation et de relations publiques. Pour mieux remplir ses engagements à cet égard, la Commission a mis sur pied cette année une Unité de l'éducation et des communications. L'objectif principal de cette unité est de faire connaître aux médias et aux collectivités ontariennes les politiques et pratiques de la Commission, de même que les droits et les obligations énoncés dans le Code.

Cette unité offre une aide spécialisée aux commissaires et au personnel en entreprenant des recherches, en élaborant des modèles et des matériels éducatifs et en coordonnant la prestation des programmes.

Cette unité consulte régulièrement nos clients, qu'il s'agisse de particuliers ou de représentants du monde des affaires et de l'industrie, des syndicats, des organismes gouvernementaux, des institutions religieuses, des écoles, des médias ou des groupes communautaires, pour faire bénéficier les politiques et pratiques de la Commission de leur apport et assurer à ces dernières une vaste diffusion.

La Commission fait appel aux ressources de la collectivité en invitant celle-ci à participer à des ateliers, des séminaires, des conférences et des comités consultatifs. Elle reste ainsi sensible aux questions et problèmes d'actualité pour être à même de répondre adéquatement aux besoins des habitants de la province en matière de droits de la personne. Les efforts déployés dans ce sens ont donné lieu à une collaboration avec la Coalition pour les droits des personnes lesbiennes et gaies en Ontario pour organiser un séminaire de formation destiné au personnel de la Commission qui s'occupe des questions de discrimination fondée sur l'orientation sexuelle.

L'Unité va continuer de s'efforcer à faire connaître les règlements de plaintes qui s'avèrent importants, et à en faire ressortir les principes qu'ils symbolisent, afin que le public comprenne mieux les questions de droits de la personne et s'y montre plus sensible.

L'Unité élaborera par ailleurs des stratégies à court et à long terme pour élargir la portée de ses activités éducatives et en faire bénéficier un plus grand public. Elle envisage notamment les mesures suivantes :

- élaborer des modèles et des matériels pour l'éducation et la formation du personnel et du public;
- établir un système d'accès, interne et externe, à l'information dont elle dispose;
- créer un centre de documentation pour le personnel et des entités externes;
- faire en sorte que toutes les publications et autres ressources de la Commission soient pleinement accessibles au public;
- publier et diffuser les directives et les politiques de la Commission sur les questions de logement, d'orientation sexuelle et de harcèlement pour des raisons fondées sur la race ou le sexe;
- développer une stratégie à l'échelle de la province pour veiller à ce que les médias accordent la place qu'il se doit aux questions qui touchent les groupes que nous servons.

En abordant les communications et l'éducation sous des angles aussi variés, l'Unité facilite dans une large mesure l'approche proactive que la Commission a adoptée pour rendre optimales l'égalité des droits et les chances pour tous les habitants de l'Ontario.

Unité pour les personnes handicapées

L'Unité pour les personnes handicapées joue un rôle interne et externe d'expert et de conseiller. Elle continue à s'occuper des plaintes et des questions de nature systémique ou complexe qui ont trait à la discrimination fondée sur un handicap.

Le handicap, qui reste le plus important motif de discrimination dans les cas soumis à la Commission, était invoqué dans 40 pour 100 de toutes les plaintes enregistrées en 1988-1989. Parmi celles-ci, 34 pour 100 faisaient état d'un handicap physique, 4 pour 100 d'un handicap mental et 2 pour 100 d'un accident du travail. Les différents types de handicap sont repris dans les statistiques annexées au présent rapport.

Nous sommes dans la sixième année d'application des dispositions du Code traitant de handicap. Avril 1988 a vu l'adoption de modifications aux articles 10 et 16 du Code, qui traitent de l'obligation de tenir compte des besoins particuliers de certains groupes de personnes. Depuis, nous avons insisté sur la prise en compte des besoins des personnes handicapées dans tous les secteurs précisés par le Code. Nous avons déployé cette année des efforts particuliers pour informer les employeurs, les pourvoyeurs de services, les locateurs et les syndicats de leur obligation de tenir compte des besoins des personnes handicapées, à moins que cela n'entraîne pour eux un préjudice injustifié.

Le sida a pris encore plus d'importance en tant que maladie du fait de règlements sans précédent intéressant des personnes se plaignant d'avoir fait l'objet de discrimination fondée sur un handicap dans les secteurs de l'emploi et des services.

Des sujets qui ont mobilisé cette année une bonne partie du personnel sont le plein accès des personnes handicapées aux transports et installations, et leur droit d'être pleinement intégrées dans le système scolaire pour y recevoir le même enseignement que les autres élèves.

Malgré la coopération des employeurs auprès desquels l'Unité mène une campagne d'information permanente sur les méthodes de sélection et d'embauche des travailleurs, les principaux obstacles que rencontrent les personnes handicapées postulant un emploi restent les examens médicaux d'embauche, les épreuves de force et les critères de condition physique qui n'ont rien à voir avec les exigences du poste. La Commission a sondé l'opinion de divers employeurs dans l'industrie lourde, l'industrie automobile, l'industrie aéronautique et le secteur hospitalier sur la question des examens médicaux d'embauche. La Commission a par ailleurs débattu de la question de l'analyse des exigences physiques et de celle de l'évaluation des capacités fonctionnelles pour qu'elles soient adaptées aux besoins des personnes handicapées postulant un emploi.

La Commission dans son ensemble, et cette Unité en particulier, continue à se pencher sur des problèmes tels que l'accès aux installations, le droit pour les élèves handicapés de bénéficier du même enseignement que les autres, et enfin le sida et ses retombées en matière d'assurance.

L'Unité a également procédé à l'examen des politiques adoptées par les employeurs des secteurs public et privé en ce qui concerne la présence du sida sur le lieu de travail; il s'agissait là d'un autre projet important de l'Unité pour cette année.

Éducation du public

L'Unité reste fidèle à son rôle d'informer le public des droits que les lois garantissent aux personnes handicapées. Comme cette année a marqué l'adoption de modifications au Code, notamment à l'article 16, l'Unité a activement participé à l'éducation du public sur les dispositions relatives à l'accès aux installations et à la prise en compte des besoins des personnes handicapées et leur recoupement avec les différents secteurs sociaux énoncés dans le Code : services, logement, contrats, emploi et associations professionnelles.

Les régions

La Commission administre sept bureaux régionaux. Leurs employés, tous experts dans le domaine des droits de la personne, sont encadrés dans chaque bureau par un chef de service. Chaque région est clairement délimitée sur le plan géographique et, sauf rares exceptions, les bureaux régionaux traitent de façon autonome les cas qui leur sont soumis. Le personnel de la Commission est très au fait de la composition démographique de chaque région et des problèmes particuliers qui s'y manifestent en matière de droits de la personne.

Les sept régions regroupent 15 bureaux de district. La liste des régions et de leurs districts respectifs, ainsi que les noms des employés de chaque bureau, figurent à la fin de ce rapport.

UNITÉ DES ENQUÊTES SUR LA DISCRIMINATION SYSTÉMIQUE

Directrice : Anita Dahlin

En janvier 1989, la Commission mettait sur pied sa première Unité des enquêtes sur la discrimination systémique, renforçant ainsi nettement ses capacités de mise à exécution des dispositions du Code.

L'Unité déploie des ressources pour identifier les groupes visés par le Code qui sont sous-représentés au travail et chercher des moyens de remédier à cette situation; elle s'efforce aussi de faire tomber les barrières systémiques à l'égalité des chances dans la province. La Commission use de son pouvoir de déposer des plaintes pour faire prendre des mesures spéciales visant l'égalité en matière d'emploi et d'éducation, tout en faisant jouer les critères numéraires pour résoudre les plaintes. Elle espère ainsi mettre un sérieux frein à la discrimination systémique.

L'Unité des enquêtes sur la discrimination systémique porte son attention sur des domaines et des pratiques bien particuliers, mais reste toujours disponible pour aider les collègues sur le terrain qui rencontrent un problème de discrimination systémique dans l'étude d'une plainte donnée.

Au fil des embauches prévues pour le prochain exercice, l'Unité compte développer les capacités suivantes :

- ☐ compétence en analyse statistique des données et des conditions économiques du marché du travail pour aider le personnel qui enquête sur la discrimination à utiliser des données numériques et imposer des remèdes appropriés;
- ☐ compétence en ressources humaines, systèmes industriels et équité d'emploi pour aider le personnel et le public à concevoir et analyser des systèmes ou des programmes d'équité;
- ☐ une équipe d'enquêteurs compétents pour planifier et effectuer des enquêtes permettant d'établir une solide jurisprudence;
- ☐ compétence en matière de discrimination fondée sur un handicap dans les cas où de nombreuses barrières systémiques empêchent les personnes handicapées de participer pleinement à la vie sociale. À cette fin, l'Unité pour les personnes handicapées, dont le rapport d'activités figure ci-après, a fusionné avec l'Unité des enquêtes sur la discrimination systémique.

UNITÉ DE L'OBSERVATION DU CODE

Directeur : Marty Schreiter

L'Unité de l'observation du Code se taille la part du lion dans les ressources humaines et financières de la Commission. Elle est le nerf vital de la structure mise en place pour exécuter la principale fonction de la Commission qui est d'enquêter sur des plaintes et de les trancher.

Cette unité défend la politique d'intérêt public adoptée par la province de l'Ontario, qui reconnaît la nécessité de protéger la dignité et la valeur de chaque personne dans la province et d'assurer à tous les mêmes chances, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, l'origine ethnique, la couleur, la citoyenneté, un handicap, la croyance, l'âge, le sexe, l'orientation sexuelle, l'état familial, l'état matrimonial, l'existence d'un casier judiciaire ou l'état d'assisté social.

À l'heure actuelle, la Commission compte 15 bureaux de district situés dans diverses parties de la province et regroupés en sept régions; ces bureaux sont placés sous l'autorité du directeur de l'observation du Code. Un huitième bureau régional doit bientôt ouvrir ses portes dans le secteur de Downsview/Rexdale et un neuvième entrera sous peu en service dans la région du Nord-Ouest.

Le principal problème auquel doit faire face cette unité est une surcharge considérable de travail. Les ressources supplémentaires prévues devraient permettre de résorber le retard accumulé et de diminuer considérablement les délais de traitement des cas que nous avons connus jusqu'ici. La Commission compte établir de nouvelles méthodes pour résoudre de manière rapide et efficace l'immense volume de cas qui lui sont soumis.

L'an dernier, plus de 70 000 demandes de renseignements ont été adressées à la Commission de toutes les régions de la province. La Commission a traité près de 2 000 cas et recouvert 1,4 million de dollars pour les plaignants. Du 1er avril 1988 au 31 mars 1989, la Commission a reçu 1 734 plaintes formelles. Pendant cette même période, elle a liquidé 1 345 dossiers : 1 009 ont été réglés, 161 ont été rejetés par la Commission (soit parce qu'ils ne relevaient pas de sa compétence, soit parce que les preuves à l'appui de la plainte étaient insuffisantes), 33 ont été refusés en application de l'article 33 et enfin, 142 plaignants ont retiré leur plainte.

La Commission a parallèlement liquidé d'importants dossiers. *La Commission des droits de la personne c. le Conseil de l'éducation de Peel* a donné lieu à un accord comprenant des mesures d'équité salariale et d'équité d'emploi. Avec le versement de près de 300 000 dollars en dommages-intérêts, le règlement de l'affaire *Buxton, Lee, MacArthur, Spanks et Moledina c. Majestic Electronics Stores, Inc. et Ramsauer* marque un moment important dans la lutte contre la discrimination et le harcèlement fondés sur la race. Ces deux cas sont décrits plus loin dans les "Exemples de cas".

ne trancherait plus les demandes d'exemption du Code, étant donné qu'aucune disposition de ce dernier ne lui en donne le pouvoir. L'article 23 du Code prévoit cependant certaines circonstances dans lesquelles une personne peut être traitée différemment dans une situation d'emploi sur la base de son sexe, de son âge, de son état matrimonial, de sa race ou de tout autre motif prévu par le Code. Un traitement particulier est permis lorsqu'une certaine qualité est requise pour l'exécution satisfaisante d'un emploi.

Pour remplacer le "processus d'exemption" et aider les membres de la collectivité à cerner leurs propres droits et responsabilités, la Commission procède présentement à l'élaboration de directives pour l'interprétation et l'application des paragraphes 23 (1) et (2) du Code; celles-ci seront publiées dans l'année à venir. Au stade préparatoire de ces directives, la Commission s'est adressée à quelque 100 groupements d'employeurs, groupes communautaires et responsables chargés de la publication d'offres d'emploi pour des postes classifiés pour avoir leur point de vue.

La Commission ayant également pour mandat d'aider les employeurs à assurer le respect des dispositions du Code sur leurs lieux de travail, l'Unité recueille des renseignements sur les procédures mises en place par les employeurs pour répondre de façon interne aux plaintes portant sur les droits de la personne. Il s'agit là d'un projet visant à établir si ces procédures sont adéquates et viables. Bon nombre d'employeurs ont instauré de tels mécanismes pour faire face à d'éventuelles violations du Code à mesure qu'elles se produisent, soit pour éviter des plaintes formelles à la Commission ou en complément de celles-ci. La Commission recueille ces renseignements auprès des employeurs, des syndicats et des groupes de défense des droits des travailleurs.

Être porteur du virus HIV ou être atteint de maladies associées à ce virus, telles que le sida, entre dans la définition que le Code donne d'un handicap. En plus de trancher des plaintes, la Commission a entrepris des travaux de recherche et d'élaboration de politiques pour lutter contre la discrimination à l'égard des personnes atteintes du sida. Nous menons présentement une étude de fond sur cette question, destinée à l'usage des professionnels des droits de la personne, des groupes communautaires et autres organismes à qui elle sera communiquée en 1989. L'Unité de la recherche et de l'élaboration des politiques aide les secteurs public et privé à définir des politiques relatives au sida, aussi bien dans le domaine de l'emploi que celui de la prestation de services.

répondu à des avis insérés dans la presse sollicitant des observations à ce sujet. Entre l'achèvement du sondage d'opinion et la mise au point des directives, le commissaire en chef a tenu plusieurs réunions avec des représentants des groupes concernés pour discuter de leurs observations et répondre à leurs questions au sujet des directives préliminaires. La version finale de ces directives sera publiée en 1989.

En outre, la Commission compte bientôt publier des directives portant sur l'absentéisme attribuable à un handicap. Les employeurs ont bien entendu le droit d'attendre de leurs employés une certaine constance dans le rendement au travail, mais les sanctions imposées à la suite d'absences résultant d'un handicap peuvent représenter dans certains cas une violation du Code. La nouvelle politique doit aider les employeurs, les travailleurs et les syndicats à comprendre les dispositions du Code relativement à de pareilles absences.

Touche également à sa fin la préparation de directives reflétant la manière dont la Commission interprète les dispositions du Code en matière de harcèlement et d'insultes ou de plaisanteries à connotation raciale. En préparant ces directives, la Commission a consulté des particuliers et des organismes qui œuvrent dans le domaine de la défense des droits des membres de la collectivité, de même que des employeurs, des syndicats et des représentants du monde des affaires et de l'industrie. Des directives similaires devraient bientôt voir le jour en ce qui a trait aux commentaires désobligeants et aux comportements importuns envers une personne à cause de son sexe.

L'alinéa 28 e) du Code enjoint à la Commission "d'examiner et revoir toute loi ou tout règlement, et tout programme mis en oeuvre ou toute ligne de conduite adoptée par une loi ou en application de celle-ci, et faire des recommandations sur une disposition, un programme ou une ligne de conduite qui, à son avis, est incompatible avec l'intention (du Code)." Les modifications à la *Loi sur les accidents du travail* proposées dans le projet de loi 162 font partie des textes de loi dont la Commission a entrepris l'examen au cours du dernier exercice. Cet examen a tenu compte des observations de bon nombre d'organismes, dont la Union of Injured Workers, la Fédération du travail de l'Ontario, le Conseil du Patronat des Accidents du Travail et les Injured Workers' Consultants. Le mémoire de synthèse a été présenté au comité législatif compétent en mars.

Le projet de loi 162 porterait entre autres atteinte au droit de réintégration de certains travailleurs blessés. Il prévoit aussi une modification en profondeur du système d'indemnisation et vise à remplacer les pensions à vie par un système d'indemnisation à deux volets, d'une part un montant forfaitaire pour perte non économique, et d'autre part, un complément salarial basé sur une estimation de la diminution de capacité de gain, plutôt que sur la nature des lésions subies.

La Commission a souligné que les dispositions relatives à la réintégration créent un important chevauchement entre sa propre compétence juridique et administrative et celle de la Commission des accidents du travail pour ce qui est de veiller à ce que les employeurs tiennent compte des besoins des employés handicapés. Le Code prime le projet de loi 162 et prévoit des remèdes plus étendus et plus souples que ce dernier; les travailleurs blessés, y compris ceux qui, aussi peu nombreux soient-ils, sont concernés par le projet de loi 162, adressent donc habituellement leurs plaintes à la Commission.

Pour corriger ce chevauchement de compétence et faire en sorte que l'on adopte une politique d'intérêt public constructive en réponse au besoin pressant de promouvoir la réintégration professionnelle des travailleurs blessés, la Commission a recommandé que la mise à exécution de tout droit de réintégration, nouveau ou explicite, soit intégrée à ses présentes responsabilités à l'égard de la prise en compte des autres besoins de ces mêmes travailleurs et que des ressources suffisantes lui soient octroyées pour faire face à ce nouveau rôle.

En ce qui concerne la nouvelle structure d'indemnisation, la Commission a critiqué les limites d'âge entrant dans le calcul du montant accordé pour perte non économique, ainsi que l'interruption obligatoire des prestations à l'âge de 65 ans. Elle a par ailleurs recommandé que l'accès aux programmes de réadaptation professionnelle soit régi uniquement par les aptitudes individuelles et non par l'âge du travailleur blessé.

À l'issue de l'examen des procédures internes de la Commission, qui a été effectué en 1988-1989, il a été décidé qu'elle n'étudierait et

UNITÉ DES FINANCES ET DE L'ADMINISTRATION

Directeur : William A. Sharp

Cette nouvelle unité est chargée de développer des rapports satisfaisants avec les responsables des pouvoirs publics qui décident les questions de finances et d'administration, notamment en ce qui concerne les ressources humaines et les systèmes d'information. Le premier souci de l'Unité au cours de l'année écoulée a été de formellement définir les besoins en ressources de la Commission pour mener à bien son plan de revitalisation. Ces besoins étaient dictés principalement par la nécessité particulière pour la Commission de ne pas avoir de liens de dépendance avec le gouvernement, tout en maintenant la qualité des services de soutien administratif indispensables à un emploi aussi judicieux que possible des fonds publics.

L'une des principales initiatives prévues pour l'exercice 1989-1990 est la mise en oeuvre d'un plan d'informatisation. Nous allons étudier dans quelle mesure les programmes de la Commission pourraient être regroupés dans un système, et avec quel équipement. La Commission prévoit de relier l'ensemble de ses bureaux à un réseau informatique afin que les responsables de ses nouveaux programmes disposent de moyens d'analyse des données.

La Commission prévoit aussi la production automatique de rapports de suivi des plaintes, associée à un dispositif d'alerte permettant de signaler en temps opportun à nos responsables les problèmes particuliers pouvant se dessiner.

UNITÉ DE LA RECHERCHE ET DE L'ÉLABORATION DES POLITIQUES

Directrice : Tanja Wacyk

La création d'une nouvelle unité chargée de mener et de coordonner les activités liées à la recherche et à l'élaboration de politiques constitue une importante initiative de la fin de l'exercice 1988-1989. Comme son mandat touche à un secteur de politiques d'intérêt public de plus en plus complexe, la Commission doit disposer d'une structure homogène lui permettant de formuler ses politiques et ses directives en suivant une stratégie globale applicable à l'ensemble de ses programmes.

L'aide à la recherche et à l'élaboration des politiques fournie par l'Unité s'étend à la Commission tout entière et se traduit par une collaboration étroite avec les responsables des autres secteurs d'activité tels que les enquêtes sur la discrimination systémique, l'observation du Code et les services juridiques. Lorsqu'il s'agit d'élaborer des directives ou des énoncés de politique relativement à l'application du Code à des domaines intéressant la collectivité, l'Unité consulte les groupes concernés, qu'ils représentent le monde des affaires ou de l'industrie, les syndicats ou encore des groupes de défense des consommateurs ou d'autres groupes d'individus, pour veiller à ce que leurs avis et leurs expériences soient dûment pris en compte.

À la suite de l'adoption, en 1987, des modifications au Code exigeant que l'on tienne compte des besoins des personnes handicapées, l'Unité entrepris d'établir des directives pour l'interprétation des nouvelles dispositions. Environ trente organismes de défense, employeurs, syndicats, locateurs et représentant de l'industrie des transports ont

Durant l'exercice 1988-1989, la Commission s'est attachée à établir des directives pour l'application des dispositions du Code à la discrimination raciale sous forme d'insultes et de plaisanteries à connotation raciale, et autres formes de harcèlement.

L'année 1987 a vu l'adoption de modifications aux articles 10, 16 et 23 du Code, où il est question de tenir compte des besoins des personnes handicapées et d'autres groupes. Le Code énonce désormais qu'il faut tenir compte des besoins spéciaux de chaque groupe visé par ses dispositions, à moins que la personne à laquelle incombe cette responsabilité ne puisse s'en acquitter sans subir elle-même un préjudice injustifié. La Commission a longuement consulté le public au cours de l'exercice 1988-1989, à la suite de quoi elle a préparé des directives pour l'interprétation et l'application de ces nouvelles dispositions en ce qui a trait au handicap.

Par ailleurs, la Commission a présenté à divers organismes des mémoires sur des sujets susceptibles d'avoir des retombées sur les droits de la personne en Ontario. Notre présentation au Groupe d'étude sur l'accès aux professions et aux métiers en Ontario a fait état des difficultés que rencontrent les professionnels et les gens de métier formés à l'étranger pour faire reconnaître leurs diplômes. Dans notre mémoire au Comité spécial sur la réforme constitutionnelle au sujet de l'Entente du lac Meech, nous avons traité des effets de l'Entente sur les droits à l'égalité tels qu'ils sont définis dans la Charte canadienne des droits et libertés.

S'adressant au Groupe d'étude sur les relations entre la police et les minorités raciales, la Commission a recommandé un certain nombre de stratégies susceptibles d'améliorer les rapports entre les minorités raciales et la police dans le souci de protéger la liberté et la dignité de chaque individu. Dans un mémoire au Comité sénatorial permanent des affaires juridiques et constitutionnelles, la Commission a analysé l'esprit du projet de loi sur le processus d'octroi du statut de réfugié et ses répercussions prévisibles sur les relations entre les groupes en Ontario.

À la suite du dépôt du projet de loi 2 modifiant la *Loi sur la Commission de l'assurance-automobile de l'Ontario*, la Commission a présenté un mémoire au Comité permanent de l'administration de la justice, dans lequel elle préconise l'application de méthodes non discriminatoires pour le calcul des primes d'assurance-automobile. Adoptée au début de 1989, la nouvelle loi bannit l'âge, le sexe et l'état matrimonial du système utilisé pour évaluer les facteurs de risque des assurés. Cette nouvelle loi touche plus de 200 compagnies d'assurances. La limitation des exemptions prévues au Code et la stipulation que seuls les véritables facteurs de risque soient inclus dans le calcul des primes d'assurance enterinent la politique officielle proclamée dans le Code, à savoir la sauvegarde du droit de chaque personne d'être jugée selon ses propres mérites et non sur des généralités.

La Commission s'est également prononcée devant un comité législatif au sujet des modifications proposées à la *Loi sur les accidents du travail* (projet de loi 162). Nous avons signalé au comité les recoupements entre le Code et le projet de loi en question, et lui avons suggéré des moyens d'y remédier. Nous avons proposé entre autres que l'accès aux programmes de réadaptation soit régi uniquement par les aptitudes individuelles et non par l'âge du demandeur.

Dans le souci de représenter la Commission, comme il se doit, sur la scène mondiale de la défense des droits de la personne, M. Raj Anand ainsi que plusieurs commissaires et membres du personnel ont participé en 1988 aux conférences de l'Association canadienne des organismes statutaires pour la protection des droits de l'homme (ACOSPDH) et de l'International Association of Official Human Rights Agencies (IAOHRA). Ces rencontres de coopération nationale et internationale rehaussent sans conteste la visibilité et l'impact des initiatives ontariennes en matière de droits de la personne et nous permettent d'obtenir des avis objectifs sur les problèmes que cherche à résoudre le *Code des droits de la personne* de l'Ontario.

Les résolutions proposées par la Commission lors de la conférence de l'ACOSPDH portaient sur l'interdiction du dépistage des drogues au travail dans l'ensemble du pays, sauf si les facultés de l'usager sont amoindries au point de présenter un danger pour ses collègues ou le public; sur un ajout à l'Entente du lac Meech énonçant clairement que l'Entente ne vise en rien à porter atteinte à la Charte des droits et libertés; et enfin, sur une modification à l'acte constitutif de l'ACOSPDH permettant à des représentants des groupes communautaires et des médias d'assister aux séances qui ont lieu lors de sa conférence. Les deux premières résolutions ont été adoptées et la troisième rejetée.

En ce qui concerne la place qu'occupe l'Ontario au sein de l'IAOHRA, la Commission et plusieurs de ses homologues canadiens s'efforcent de faire jouer un rôle plus important aux membres canadiens de cet organisme dès la conférence de 1989, afin que le champ d'action de ce dernier soit véritablement international.

INITIATIVES DE LA COMMISSION 1988-1989

Notre priorité au cours de cet exercice a été la réorganisation en profondeur du fonctionnement de la Commission, de sa structure et de ses programmes. Cette réorganisation a débuté avec la nomination de M. Raj Anand au poste de commissaire en chef en janvier 1988 afin de remédier à l'inaptitude croissante de la Commission d'assurer une mise en oeuvre efficace de ses programmes, tandis qu'augmentaient les attentes de la collectivité, notamment après la vaste expansion du champ d'application du *Code des droits de la personne* en 1982. La multiplication rapide du nombre des plaintes (plus 130 pour 100 entre 1981-1982 et 1984-1985) a annihilé les efforts fournis par la Commission pour mettre en application les modifications apportées au Code en 1982. Par ailleurs, le fonctionnement de la Commission n'ayant jamais fait l'objet d'une évaluation adéquate depuis sa création en 1962, l'adoption de nouvelles méthodes de gestion interne et de traitement des cas devint impérative pour faire face à la charge de travail de plus en plus volumineuse et complexe.

En 1987, le discours du Trône reconnaissait la nécessité de revitaliser la Commission par une augmentation de ses ressources et un remaniement interne. L'accentuation des attentes et des espoirs des minorités, des femmes et des personnes handicapées, de même que l'évolution démographique ont fait monter le ton de revendication d'une meilleure protection des droits de la personne.

C'est ainsi que la Commission s'est vu octroyer des ressources supplémentaires lui permettant de lancer de nouveaux programmes touchant à la discrimination systémique, à la recherche et l'élaboration des politiques, et enfin à l'information et l'éducation du public. À l'issue de la révision approfondie de nos procédures, entamée en 1988, nous serons en mesure, au cours de l'exercice 1989-1990, de prendre de nouvelles initiatives qui nous permettront de résoudre une plus grande variété de cas, de manière plus efficace. Ces initiatives sont décrites plus loin.

Dans l'exécution de ses nouvelles tâches, le commissaire en chef a organisé de nombreuses réunions et consultations avec des employés, des représentants du monde des affaires et de l'industrie, des syndicats, des organismes communautaires et des organismes de défense des droits de la personne, des institutions religieuses et autres, en plus de réunions avec le personnel de la Commission et des groupes communautaires dans les régions. M. Anand a participé à nombre de conférences, séminaires et réunions locales où il a souvent pris la parole pour prôner la défense des droits et éduquer le public en la matière. Il a saisi ces occasions pour insister sur la nécessité d'adopter des mesures législatives rendant obligatoire la mise en application de l'équité d'emploi, sans exceptions, afin d'éliminer les barrières systémiques qui demeurent dans les secteurs public et privé.

M. Anand a également fait connaître les effets désastreux qu'on sur la productivité des travailleurs les pratiques discriminatoires de nombreux employeurs par ailleurs insensibles au harcèlement que subissent au travail les membres des minorités raciales, les femmes et les personnes handicapées. Au bout du compte, la discrimination a des répercussions économiques importantes sur le monde des affaires et d l'industrie et sur la collectivité tout entière.

MESSAGE DU DIRECTEUR GÉNÉRAL

L'année écoulée a été pour la Commission synonyme de dynamisme et de changement. Nous avons renouvelé notre équipe dirigeante en recrutant des professionnels qui, de par leur engagement personnel, sont prêts à déployer tous leurs efforts pour que la Commission reste un organisme à la fois indépendant et attentif aux besoins de la collectivité. Dans les années à venir, cette équipe donnera à notre organisme les moyens de mieux agir dans le présent et de se tourner vers l'avenir.

La planification stratégique de la mise en oeuvre de nos objectifs à long terme est en bonne voie. Ces objectifs sont : l'aide aux divers groupes que nous servons, la promotion et la défense de leurs droits, et enfin, l'indépendance de la Commission. Sur le plan de l'organisation et de la gestion, nous avons conçu et mis en place une nouvelle structure qui tient compte du mandat qui est le nôtre aux termes du *Code des droits de la personne*.

Comme cela est indiqué dans les pages qui suivent, la Commission a créé une unité juridique indépendante et, étant assujettie aux exigences administratives du gouvernement, elle a assuré un meilleur contrôle de ses finances et de sa gestion.

Une vaste série de consultations du public a abouti à la prise d'un certain nombre d'initiatives importantes en matière de politiques.

Nous élaborons présentement une stratégie de communication qui nous permettra de répondre plus adéquatement à l'examen critique de la part du public et à mettre sur pied un programme proactif de sensibilisation aux droits de la personne.

La révision des procédures par lesquelles nous veillons au respect du Code doit s'achever à l'automne 1989; nous pourrons dès lors procéder à une formation plus cohérente de notre personnel et résoudre les cas qui nous sont soumis dans de meilleurs délais, en employant des méthodes uniformes. L'Unité de l'observation du Code et l'Unité des enquêtes sur la discrimination systémique collaborent présentement à l'élaboration d'une méthode rationnelle et homogène pour la conduite des enquêtes. La nouvelle Unité des enquêtes sur la discrimination systémique diffusera les connaissances et les stratégies nécessaires pour la résolution des cas touchant à cet important domaine.

La Commission s'est fermement engagée à se comporter comme un employeur modèle. Nous sommes de ce fait en train de revoir et d'améliorer nos pratiques internes afin de suivre nos programmes et notre mandat à la lettre et d'offrir l'égalité des chances aux termes du *Code des droits de la personne*.

La Commission compte collaborer avec d'autres ministères à l'élaboration de leurs politiques en matière de droits de la personne. Nous nous réjouissons à la perspective d'un effort d'équipe qui doit assurer qu'à l'avenir, les droits de la personne seront toujours respectés en Ontario.

A.J. Diamond, commissaire
Architecte et urbaniste renommé depuis plus de vingt ans, M. Diamond a remporté de nombreux prix nationaux et internationaux en architecture et en urbanisme. Diplômé des universités du Cap, de Pennsylvanie et d'Oxford, maître de conférence et professeur dans diverses universités au Canada et aux États-Unis, M. Diamond a été, entre autres, président du Comité consultatif sur le design de la Commission de la capitale nationale. Le mandat de M. Diamond à la Commission a expiré en février 1989.

Catherine L. Frazee, commissaire
M^me^ Frazee est commissaire à la Commission ontarienne des droits de la personne depuis février 1985. Elle vient d'être renommée pour un second mandat. Elle est présentement agente de coordination auprès d'Amnesty International. M^me^ Frazee est membre du conseil d'administration de l'Association canadienne des paraplégiques et a travaillé à titre bénévole au sein de divers organismes communautaires dont Help Line, les Jeux olympiques spéciaux du Canada pour les handicapés intellectuels, l'Année internationale des personnes handicapées et Daybreak Community for Mentally Disabled Adults.

Elizabeth Kishkon, commissaire
Résidente de Windsor, M^me^ Kishkon a été nommée commissaire en mars 1986. Elle a commencé sa carrière comme commentatrice politique et intervieweuse à la Société Radio-Canada en 1971. M^me^ Kishkon fait partie du conseil d'administration de divers organismes de services sociaux et participe de façon active aux projets communautaires et aux affaires municipales. Elle a été membre du conseil municipal de Windsor et a été élue première femme maire de cette ville.

Louis Lenkinski, commissaire
Membre de l'Union internationale des rembourreurs pendant de nombreuses années, M. Lenkinski en a été le représentant commercial de 1958 à 1969. Depuis, il a assumé les fonctions de directeur des projets et secrétaire administratif du Conseil du travail du Toronto Métropolitain. En 1975, il était nommé adjoint de direction de la Fédération du travail de l'Ontario. En 1984, il devenait membre à temps partiel de la Commission des relations de travail de l'Ontario. Participant activement au conseil d'administration de nombreux organismes communautaires, M. Lenkinski a été nommé commissaire en juillet 1987.

Lilian Ma, commissaire
M^me^ Ma a été nommée à la Commission en mars 1986. Très active au sein de la collectivité, M^me^ Ma a été administratrice et membre de divers organismes : Conseil ethnoculturel du Canada, Conseil national des Canadiens-Chinois, Organisation nationale des femmes immigrantes et des femmes appartenant à une minorité visible du Canada et Conseil des Canadiens-Chinois de l'Ontario. Elle est membre du Comité des droits à l'égalité, mis sur pied par le Conseil canadien de développement social afin d'administrer le programme de contestation de la Cour fédérale. M^me^ Ma a démissionné de son poste de commissaire pour accepter celui de chef de la sensibilisation du public à la Direction des relations interraciales et de la compréhension interculturelle au Secrétariat d'État.

Shirley O'Connor, commissaire
M^me^ O'Connor, qui est présidente de la Ontario Native Women's Association, habite à Sioux Lookout. Elle a été directrice du Nishnawbe Gamik Friendship Centre et membre de la chambre de commerce de Sioux Lookout et du comité pour l'expansion économique de cette ville de 1984 à 1986. M^me^ O'Connor a également fait partie du conseil d'administration de l'hôpital général de Sioux Lookout et de la Ontario Metis and Non-Status Indian Association.

Robert G. Paris, commissaire
Nommé à la Commission en février 1987, M. Paris est directeur du Centre de traduction et de documentation juridiques de l'Université d'Ottawa. Diplômé de l'Université Laval et d'Osgoode Hall, M. Paris a été admis au Barreau en 1954. Il est également professeur à temps partiel à la Faculté de droit de l'Université d'Ottawa.

David Philpott, commissaire
Nommé en mars 1989, M. Philpott offre à la Commission une vaste expérience professionnelle acquise principalement dans le secteur privé. Diplômé de l'école d'architecture de l'Université de Toronto, M. Philpott a travaillé dans les domaines du bâtiment, de la gestion financière, des placements et de l'immobilier commercial, de même que comme expert-conseil. À l'heure actuelle, M Philpott gère sa propre entreprise et siège au conseil d'administration de quatre autres organismes, dont la Compagnie d'opéra canadienne. M. Philpott est l'auteur d'un succès de librairie intitulé *Dangerous Waters*.

LA COMMISSION

Raj Anand, commissaire en chef
Originaire de New Delhi (Inde), M. Anand a été nommé à la direction de la Commission le 4 janvier 1988. Diplômé *magna cum laude* en mathématiques de l'Université Queen's, il a fait ses études à la Faculté de droit de l'Université de Toronto. Il est membre du Barreau depuis 1980. Détenteur de nombreuses bourses et distinctions académiques, M. Anand est également l'auteur d'articles juridiques sur les dispositions de la charte ayant trait aux droits à l'égalité, aux abus en psychiatrie et aux droits des enfants. En 1987, il représentait à lui seul le Groupe d'étude sur l'effet de la loi concernant la violation de propriété publique sur les jeunes et les minorités. Avant d'être nommé commissaire en chef, M. Anand était un associé du cabinet d'avocats Cavalluzzo, Hayes and Lennon de Toronto.

R. Lou Ronson, vice-président
M. Ronson a quitté récemment la présidence du conseil de la Workwear Corporation of Canada et siège au conseil d'administration de plus d'une vingtaine d'entreprises et d'organismes communautaires. Lauréat de nombreux prix humanitaires, notamment du prix national en relations humaines du Conseil canadien des chrétiens et des juifs, il a également présidé une mission commerciale internationale organisée par le ministère de l'Industrie et du Tourisme de l'Ontario et la Chambre de commerce Canada-Israël. Il a été délégué à l'Atelier international de l'UNESCO sur le racisme et la discrimination en 1971. Il a également été président national de la Ligue des droits de la personne du B'nai Brith du Canada.

George W. Bancroft, commissaire
M. Bancroft est professeur et ancien président du département d'histoire, philosophie et sociologie de l'éducation à l'Université de Toronto. Ses nombreux écrits traitent d'éducation et de sociologie et des relations entre groupes. De 1980 à 1983, il était directeur général de la Division des relations civiques et multiculturelles de l'ancien ministère des Affaires culturelles et des Loisirs. Il fait partie du conseil d'administration du Conseil canadien des chrétiens et des juifs (région de l'Ontario).

John T. Cochrane, commissaire
M. Cochrane est membre du conseil exécutif de la Section 6500 des Métallurgistes unis d'Amérique et vice-président du Sudbury and District Labour Council. Il sert d'agent de liaison entre la Commission des accidents du travail et les Comités de santé et sécurité des syndicats locaux, recueillant des renseignements au sujet de demandes d'indemnisation des travailleurs. M. Cochrane est également membre du Comité des services d'emploi pour les jeunes, et ancien directeur de la Elizabeth Fry Society.

Reva Devins, commissaire
Nommée à la Commission en février 1987, M^me^ Devins a étudié à l'Université York. Elle est diplômée en droit de l'Université de Harvard et d'Osgoode Hall. Elle a travaillé à titre de clerc pour un juge de la Cour suprême du Canada.

MESSAGE DU COMMISSAIRE EN CHEF

Les droits de la personne ont occupé une place proéminente parmi les problèmes auxquels ont dû faire face les Ontariennes et les Ontariens au cours de l'année passée. Qu'il s'agisse d'immigration, de réfugiés, de l'Entente du lac Meech, des relations entre la police et les minorités raciales, notre action, pour être constructive, exige l'application des principes fondamentaux du respect des droits de la personne. De par son mandat, qui est de veiller à l'application du *Code des droits de la personne*, la Commission ontarienne des droits de la personne se doit de montrer la voie en Ontario en ce qui a trait au respect des droits de la personne et d'agir comme catalyseur dans ce domaine.

Nous nous félicitons que le gouvernement maintienne son engagement de renforcer et de revitaliser la Commission ontarienne des droits de la personne. Fidèles à ce principe, nous avons fait en sorte que le respect des droits de la personne demeure en bonne place à l'ordre du jour des débats sur les questions de politiques d'intérêt public. Nous avons rédigé des mémoires et présenté des exposés sur des questions-clef telles que le rôle de la police, les accidents du travail et l'immigration. Nous avons aidé plusieurs ministères qui nous en ont fait la demande à élaborer des lois et des politiques qui reflètent le *Code des droits de la personne*. Enfin, nous avons entamé la restructuration de la Commission en vue de mieux remplir notre mandat et de répondre plus efficacement aux besoins des secteurs public et privé.

La conduite d'enquêtes sur la discrimination systémique sera le fer de lance de la Commission dans un effort de lutter plus activement contre la discrimination sur les lieux de travail. L'un des objectifs principaux de la Commission est l'équité d'emploi obligatoire et universelle dans la province de l'Ontario. Nous sommes convaincus que la mise en oeuvre d'un programme obligatoire est l'un des moyens les plus efficaces de redresser le déséquilibre généralisé qu'engendre la discrimination. *Le Code des droits de la personne* sous-tend sans l'ombre d'un doute la responsabilité d'un tel rééquilibrage. Les textes législatifs relatifs à l'équité d'emploi mettront tous les employeurs sur un pied d'égalité et confirmeront le bien-fondé des attentes de la collectivité.

Il est essentiel, pour le bon fonctionnement de la Commission et pour les communautés qu'elle est chargée de servir, que la Commission ait connaissance de leurs besoins et qu'elle y réponde. Nous cherchons toujours à renforcer nos liens avec les communautés et nous sommes reconnaissants de l'aide qu'elles peuvent nous apporter dans ce sens.

L'évolution démographique à laquelle nous assistons actuellement présente de nombreux défis et possibilités qui nous permettront de nous pencher encore davantage sur les questions de droits de la personne. Si nous parvenons à proposer des solutions qui respectent la dignité de toutes les personnes résidant en Ontario, nous aurons là un indice tangible de notre réussite.

Ontario Human Rights Commission
Commission ontarienne des droits de la personne

12th Floor
400 University Avenue
Toronto, Ontario
M7A 2R9

12e étage
400, avenue University
Toronto (Ontario)
M7A 2R9

Chief Commissioner
Commissaire en chef

(416) 965-6847

Juin 1989

Monsieur Gerry Phillips
Ministre des Affaires civiques
77, rue Bloor ouest
6e étage
Toronto (Ontario)
M7A 2R9

Monsieur le ministre,

Conformément au paragraphe 30 (1) du *Code des droits de la personne (1981)*, j'ai le plaisir de vous remettre le rapport annuel de la Commission ontarienne des droits de la personne pour l'exercice 1988-1989, qui doit être déposé à l'Assemblée législative de l'Ontario.

Ce rapport présente les activités de la Commission jusqu'au 31 mars 1989.

Veuillez agréer, Monsieur le ministre, l'assurance de mes sentiments les plus distingués.

La commissaire en chef,

Catherine Frazee

Catherine Frazee

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COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE 1988-1989

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COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE



RAPPORT ANNUEL
1988-1989

ONTARIO HUMAN RIGHTS COMMISSION



ANNUAL REPORT 1989-1990

ONTARIO HUMAN RIGHTS COMMISSION

" Formerly, we thought that equality only meant sameness and that treating persons as equals meant treating everyone the same. We now know that to treat everyone the same may be to offend the notion of equality. ..... Equality means nothing if it does not mean that we are of equal worth regardless of differences in gender, race, ethnicity, or disability. The projected, mythical, and attributed meaning of these differences cannot be permitted to exclude full participation. "

- Report of the
Commission on Equality in Employment,
Judge Rosalie Silberman Abella,
October 1984

ANNUAL REPORT 1989-1990

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Ontario
Human Rights
Commission

Commission
ontarienne des
droits de la personne

June 1990

The Honourable Bob Wong
Minister of Citizenship
77 Bloor Street West
5th Floor
Toronto, Ontario
M7A 2R9

Dear Mr. Wong:

Pursuant to Section 30(1) of the **Human Rights Code, 1981,** it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1989/90 for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1990.

Yours sincerely,

Catherine Frazee

Catherine Frazee
Chief Commissioner

CHIEF COMMISSIONER'S REMARKS

We are living in extraordinary times, in which the prominence of human rights issues on the public agenda is unparalleled.

Over the last twelve months we have been witness to grand events in human history, giving cause for hope and celebration, and affirming the irresistible human yearning for freedom and justice. Just one year ago, who would have foreseen the lifting of the iron curtain in Eastern Europe? How many dared to speculate about the release from captivity of Nelson Mandela in South Africa?

Against such a backdrop, the contribution and accomplishments of a provincial human rights commission might appear insignificant. This past year was a difficult one for our Commission, a crucible of constant media and public scrutiny and internal upheavals. Yet through it all, we have emerged a tougher mettle, transformed and renewed, a team of highly skilled and dedicated professionals, and an agency of unwavering purpose and direction.

As the contents of this report detail, it has been a busy and productive year for our Commission. We have shown leadership on important issues of social policy and in vital public education initiatives. We have ordered our own affairs and administration, consistent with standards for an employer of best practice. We have championed causes, sometimes against the tide of popular opinion and frequently at the vanguard of evolving notions of equality. We have challenged the status quo, often successfully - occasionally losing a battle, but always cognizant that some battles lost, turn victory on its ear, and set the stage for change.

We have built bridges and strengthened ties. We have been vigilant to bring an awareness of human consequences to bear upon each of our actions and decisions. Without compromising the necessary impartiality of our investigations and decision making processes, we have endeavoured to cultivate what Madam Justice Bertha Wilson describes as that "special ability to **listen with connection** before engaging in the separation that accompanies judgement".

Our Compliance Unit responded to a daunting total

of over 60,000 inquiries last year, almost 250 per day, and processed nearly 40 formal complaints of discrimination each week. Notwithstanding this intense activity, our caseload has grown enormously, and case aging statistics for 1989/90 are unacceptable against any reasonable standard. The trend, however, will change. Over the past year, numerous and significant strategic, structural and operational innovations have been designed and are now being implemented to reduce caseload and complaint processing time. The coming year will measure our success in meeting the demands of a caseload approaching crisis proportions.

In all of this activity and effort, we have been governed by values as distinct from pressures, and have pursued our vision of a credible, accessible, effective and progressive human rights commission.

But just as we are living in extraordinary times, we are nurturing a fragile tradition.

Over the past twelve months we have witnessed troublesome events in Canadian history, placing the destiny of our nation at risk, affirming the sorrow and acrimony of wounds yet unhealed, and causing incalculable harm to the esteem, integrity and security of the most vulnerable members of our human family. Against these forces, what possibility is there for a human rights agency of 170 public servants and eleven Commissioners to fulfil its mandate and advance a vision of equality?

Not long ago, Innu Chief John Kelly wrote:

"You may not share my spiritual anguish as I see the earth ravaged by the strangers, but you can no longer escape my fate as the soil turns barren and the rivers poison. Much against my will, and probably against yours, **time and circumstance have put us in the same circle**. And so I come not to plead with you to save me from the monstrous stranger ... I come to inform you that **my danger is your danger**, and my genocide is your genocide."

His words resonate beyond the particular context of global ecology. They provide a compelling metaphor for a social and cultural environment threatened by the monstrous strangers of intolerance, violence, degradation and disrespect. They are an invocation to all of us to active solidarity and shared responsibility.

Time and circumstance have indeed put us in the same circle. Respect for the dignity of every human life is the civilizing centre of that circle. It is the foundation for our **Human Rights Code**, and the moral imperative to which every person in Ontario is obliged.

HUMAN RIGHTS

IN ONTARIO

The Ontario Human Rights Code was enacted in 1962. It consolidated various anti-discrimination provisions which had been passed in Ontario, into a comprehensive Human Rights Code. Since that time the **Code** has been amended on various occasions, and in 1981 a new Code was proclaimed; the new **Human Rights Code** became law on June 15, 1982. In 1986, further amendments to the **Code** brought the legislation in line with the Equality Rights section of the Charter of Rights and Freedoms.

The aim of the **Code**, which takes precedence over other legislation in Ontario, is to create, at the community level, a climate of understanding and mutual respect in which all people are equal in dignity and rights, in which each person is a part of the whole Canadian community, and in which each has a rich contribution to make to the development and well being of our province.

The **Human Rights Code, 1981**, provides that every person has a right to freedom from discrimination ..

in the areas of:

- services, goods and facilities
- the occupancy of accommodation
- contracts
- employment
- membership in vocational associations and trade unions

on the grounds of:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed (religion)
- sex (includes pregnancy)
- sexual orientation
- handicap (physical or mental disability)
- age (18-65 years in employment; 16 years and over in the occupancy of accommodation; 18 years and over in the other areas)
- marital status (including common-law, divorced, separated)
- family status (parent-child relationship)
- the receipt of public assistance (in accommodation only)
- record of offences (provincial offences, pardoned federal offences - in employment only).

COMMISSIONERS

Members of the Ontario Human Rights Commission are appointed by the Lieutenant Governor in Council. Acting as a board of directors, the Commissioners have overall responsibility for the administration of the **Human Rights Code** in the province.

One of the major functions of the Commissioners is to establish policies and to review complaints filed by the public. In cases where settlement has not been reached, Commissioners will determine whether a Board of Inquiry should be appointed, whether they should be returned for further investigation, or whether they should be dismissed.

In addition to determining human rights policies in Ontario and reviewing complaints, Commissioners also work with staff members in various committees to enhance the performance of the Commission, in such areas as educational outreach and case management.

Other public education efforts made by the Commissioners include attending speaking engagements and commenting on current human rights issues. Through these activities, Commissioners play an important role in educating the public about the **Code** and human rights in general.

There were 12 Commissioners in the beginning of the last fiscal year. Commissioner Robert G. Paris passed away in late fall, 1989.



The Chief Commissioner addressed a
eception in her honour sponsored by the
Urban Alliance on Race Relations.

Catherine Frazee was appointed Chief Commissioner of the Ontario Human Rights Commission in September 1989, after serving three months as acting Chief Commissioner and four years as a Commissioner. Prior to her appointment as Chief Commissioner, she served as Coordination Officer for Amnesty International, where she planned human rights campaign activities, consulted on political and communications strategies and developed the expertise of volunteers in international human rights advocacy.

Ms. Frazee received her post-secondary education at Carleton University in Ottawa, majoring in English and Linguistics and at Dalhousie Law School in Nova Scotia. She is the recipient of several academic awards and scholarships and is fluent in French. She worked for several years in the private sector, notably with Esso Petroleum Canada where she held positions in human resource planning, marketing and product quality assurance. She has lectured and written extensively on human rights issues in Canada and abroad.



Catherine Frazee



R. Lou Ronson

Ms. Frazee is also actively involved in community work. She has served as board member of the Canadian Disability Rights Council and the Canadian Paraplegic Association. She is a member of Persons United for Self Help and has served in a voluntary capacity with the Canadian Special Olympics, the Canadian Association for Community Living and Servas International. She also sits on the advisory board of the Ontario Law Reform Commission.

Vice-Chair: R. Lou Ronson

Mr. Ronson is retired Chairman and C.E.O. of the Work Wear Corporation of Canada. A former National Chairman of the League for Human Rights of B'nai Brith, he has been active in community and human rights issues for over 40 years. In 1971 he was appointed a Canadian delegate to the UNESCO International Workshop on Racism and Discrimination, held in the U.S.A. He has served as President of B'nai Brith Canada and also as National Co-Chairman of the Canadian Council of Christians and Jews, from which he received the National Human Rights Award in 1979. Mr. Ronson is also a former Chairman of the Joint Community

Relations Committee of Canadian Jewish Congress and has recently become involved in international issues as a Vice President of B'nai Brith International, and through his appointment to the National Advisory Committee of the Anti-Defamation League in the United States. He is a founder of the R. Lou Ronson Research Institute on anti-Semitism; an Honorary Vice President of the Toronto Jewish Community Centre and a Board member of Mount Sinai Hospital. The University of Haifa honoured him in 1984 with the establishment of a foundation in his name providing scholarships to overseas students. In recent years, he has continued to maintain business activity as a Director of Bank Hapoalim (Canada).

Dr. George Bancroft

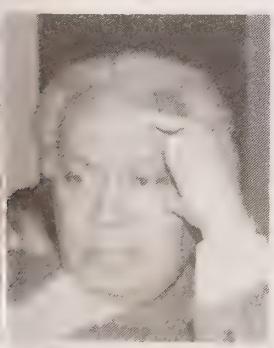
Dr. Bancroft is Professor Emeritus in the Department of Policy and Foundations of the Faculty of Education, University of Toronto. He has taught in Guyana, Quebec, Ontario, and New Jersey; and has written extensively on social and educational issues. From 1965-68, Dr. Bancroft was a member of the Provincial Commission on Aims and Objectives of Education for the Schools of Ontario. He also served as Executive Director of the Multiculturalism and Citizenship Division of the former Ministry of Culture and Recreation.

John T. Cochrane

Mr. Cochrane is an Executive Board member of Local 6500, United Steelworkers of America. He is the first full-time Compensation Officer for his union, dealing specifically with industrial diseases in northern Ontario. Appointed to the Commission in January, 1988, Mr. Cochrane is also a Director of FED-NOR, a federal government initiative to stimulate economic development throughout northern Ontario.

Reva Devins

Ms. Devins has been a Commissioner with the Ontario Human Rights Commission since March of 1987, and has recently been reappointed for a second term. She completed her undergraduate studies at York University and obtain a law degree from Osgoode Hall and a graduate law degree from Harvard University. She was subsequently selected to serve as a law clerk to Mr. Justice Estey at the Supreme Court of Canada. A member of the Bar of Ontario, Ms. Devins has done legal research at the Canadian Human Rights Commission and assisted counsel in a major provincial inquiry.



Dr. George Bancroft



John T. Cochrane



Reva Devins

Elizabeth Kishkon

A resident of Windsor, Elizabeth Kishkon was appointed to the Commission in March of 1986. She began her professional career as political commentator and interview host for the CBC in 1971, while still serving as board member of various social service agents. An active participant in community projects and municipal affairs, Ms. Kishkon was a member of Windsor City Council and was elected as the City's first woman mayor. She is currently working as a freelance broadcaster.

Louis Lenkinski

A member of the Upholsterers' International Union for many years, Mr. Lenkinski served as its business representative from 1958 to 1969. Since then, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975, he became Executive Assistant to the Ontario Federation of Labour, and in 1984 was appointed a part-time member of the Ontario Labour Relations Board. Mr. Lenkinski joined the Commission in July of 1987, and is currently involved in executive work of a number of community organizations.

Shirley O'Connor

A resident of Sioux Lookout, Ms. O'Connor is former President of the Ontario Native Women's Association. She was Executive Director of the Nishnawbe Gamik Friendship Centre and was a member of the Sioux Lookout Chamber of Commerce and the Town Council Economic Development Committee from 1984 to 1986. Ms. O'Connor joined the Commission in January, 1988. She also served on the Governing Board of the Sioux Lookout General Hospital and on the Board of Directors of the Ontario Metis and Non-Status Indian Association.

Robert G. Paris

Appointed to the Commission in February of 1987, Mr. Paris was Director of the Centre for Legal Translation and Documentation at the University of Ottawa, and a part-time professor in the Faculty of Law. He graduated from Laval University and Osgoode Hall Law School, and was called to the Bar in 1954. Mr. Paris passed away in late fall, 1989.



Elizabeth Kishkon



Louis Lenkinski



Shirley O'Connor

David Philpott

Mr. Philpott was appointed to the Commission in March of 1989, and brought with him a vast fund of experience acquired from the private sector. He studied at the School of Architecture, University of Toronto, and has worked in contracting, finance and investment, commercial real estate development and as a consultant. At present, Mr. Philpott operates his own company and holds directorships in other organizations, including the Canadian Opera Company. He has written a popular book entitled "**Dangerous Waters**".

Jodey Porter

Ms. Porter has just completed eight years of service with the Canadian Diabetes Association as Executive Director of the Ontario Council on Diabetes and as the first Executive Director for the Ontario Division of CDA. She has accepted appointment by the Minister of Health to coordinate diabetes services for the province. Ms. Porter believes in the need for consumer-led advocacy and has volunteered her time to more than fifty organizations that advocate for the recognition and strengthening of individual rights. Appointed to the Commission in April, 1989, she is currently the Chairperson of the Commission's Outreach Committee. A native of London, Ms. Porter serves locally as a member of the Grand Theatre Board and Strategic Planning Committee. She is also a member of the Executive Committee and Board of Directors for the Canadian Centre for Philanthropy, and chairs that organization's Training and Development Committee.

Pam K. Gill

Appointed to the Commission in May of 1989, Ms. Gill draws upon extensive experience in social work with the federal government's New Horizon grant programme and as Executive Director of the Richmond Multicultural Concerns Society. She also served as Manager of the Counselling Services Team at the South Asian Social Organization. Ms. Gill has a social work degree and a science degree from the University of British Columbia, and is fluent in four languages.



Robert G. Paris



David Philpott



Jodey Porter



Pam K. Gill

FINANCE & ADMINISTRATION

Acting Director: Albert Ganesh

The Finance and Administration Unit is responsible for providing administrative support for the operating units of the Commission in areas of financial planning and management, accounting, human resources, information technology and systems, and administrative operations, through the development and implementation of sound management processes, policies and procedures. It also provides specialized support services to the Commission in the administration of the Freedom of Information and Personal Privacy Act, 1987.

In the past year, the Unit has been involved in the following initiatives:

- enhancing the financial planning and budgeting process, and undertaking to decentralize the Commission's budget to its regional offices
- conducting a review of, and initiating two informational technology pilot projects on electronic mail and word processing, resulting in the initial acquisition and introduction of information technology to all Commission offices
- accelerating recruitment activities to develop position specifications and finalize recruitment for new positions, especially for the Compliance Unit
- developing an Employment Equity Policy and an Orientation Program for new Commission employees
- providing new/improved accommodation facilities for Head Office as well as a number of regional offices which were seriously overcrowded

This Unit continues to work towards the development and implementation of activities necessary to promote sound and progressive administrative policies and practices for the Commission.

POLICY DEVELOPMENT & RESEARCH

Director: Tanja Wacyk

The Policy Development and Research Unit develops policies and guidelines with respect to the interpretation and application of the provisions of the **Code**. These guidelines are used by Commission staff in the investigation of complaints, and by members of the public to determine their rights and responsibilities under the **Code**.

In its activities, the Unit also provides support to the Commission as a whole as well as to such program areas as Compliance and Systemic Investigation. It also participates on external committees and organizations as part of its mandate to monitor and attempt to resolve the increasingly complex human rights issues in Ontario. Frequent consultations about these issues are held between Unit staff and the Commission's constituent groups, such as community and advocacy organizations, business and industry, unions and social service or health care delivery systems. The main purpose of these consultations is to ensure that the views of the community with regard to proposed policy directions for the Commission are known and considered.

A critical aspect of the Unit's program involves the Commission's responsibilities under subsection 28(e) of the **Code**, which provides that it is the function of the Commission to examine and review any statute or regulation, and any program or policy made by or under an Ontario statute and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of the **Code**. As an example, the Unit is represented on a Ministry of Education committee which is reviewing materials to be used for human rights education, and is also participating on an advisory committee which is developing a resource document for use by public school boards with respect to the use of prayers in opening and closing exercises. Other initiatives on which the Ministry of Education has invited our participation include the teaching of sensitive racial and religious issues in literature.

Since a major function of policy development is to ensure that the application of the **Code** is responsive to the current issues and trends in the community, the Unit is involved in a number of co-operative relationships with community groups and or-

ganizations. For instance, Unit staff have been working with members of the Ontario Council of Sikhs in efforts to address and resolve a number of issues of concern to that community.

Among these issues is the disparate impact experienced by Sikhs, who must wear turbans, because of the requirements under the **Highway Traffic Act** to wear a motorcycle helmet, and the restrictive policy regarding the wearing of kirpans in a courtroom, and in the schools.

Information exchange with other human rights agencies, at national and international levels, is an important activity that promotes the development of new co-operative strategies to eradicate discrimination. Staff members have participated in many conferences and educational forums during the year; and Unit Director, Tanja Wacyk, was elected Vice-President of the International Association of Organized Human Rights Agencies.

In June, a policy statement entitled **"HIV/AIDS - Related Discrimination"** was released by the Director at an international conference on AIDS in Montreal. The policy sets out the Commission's interpretation of those provisions of the Code relating to the protection of persons with AIDS from discrimination.

Several new policies and guidelines are currently being prepared:

- A policy statement on racial slurs and harassment, and racial jokes
- Guidelines setting out the types of conduct that can constitute discrimination in the area of sexual harassment
- Requirements for accommodating religious differences among employees

Earlier in the year, the Commission presented a submission to the Standing Committee of the Legislature on the Administration of Justice, proposing a number of measures to improve police-minority relations. The submission was based on the Commission's experience with complaints alleging discrimination or harassment by the police, as service providers and as employers. The brief set out the position that the diverse groups that comprise Ontario society must be given the opportunity to monitor the activities of the police through such mechanisms as civilian review boards. A proposed new **Police Services Act** was introduced in the Legislature in December. It would create a province-wide system to resolve complaints about police conduct, and would include provision for an employment equity program.

Another major legislative initiative involved a review of the **Employment Standards Act** by the Ministry of Labour. The Unit prepared two submissions to the Ministry: one dealt with all aspects of the **Act** on which the **Code** has impact, such as absenteeism because of illness, and the other addressed family leaves, including pregnancy and parental leaves.

The Unit also reviewed and prepared comments on the proposed **Disabled Persons' Minimum Wage Act**, which is intended to apply to persons with disabilities who are employed in sheltered workshops and supported employment programs.

SYSTEMIC INVESTIGATION

Director: Anita Dahlin

The Unit was created in 1989 to provide the Commission with the capability to address more effectively the complex and evolving issues of systemic discrimination, and to devise strategies for identifying and eliminating systemic barriers.

The Unit is deploying its energies in two major endeavours: strategic enforcement and consultative services.

Strategic enforcement efforts are aimed at dismantling systemic barriers, through identifying and rectifying under-representation of designated groups. This will involve investigating appropriate cases initiated by the Commission itself, especially where it feels there is wide public impact. These cases may also be identified through the Commission's Compliance program.

The Systemic Unit will have teams of Enforcement Officers, often working in tandem with Officers in the regions, who will investigate and attempt to conciliate systemic cases. It is anticipated that these investigations will lead to model settlements (or, failing which, Boards of Inquiry), which may include the implementation of service or employment equity programs.

The Unit has also been leading the Commission's strategic enforcement initiative to deal with cases of systemic discrimination against persons with disabilities. Strategic priority is being assigned to cases that will promote the goals enunciated in the Commission's **Guidelines for Assessing Accommodation Requirements for Persons with Disabilities**. Over the past year, the Unit has consulted with groups representing persons with disabilities, including the Advocacy Resource Centre for the Handicapped (ARCH), the Office for Disabled Persons and the Coalition of Disabled Persons for Employment Equity regarding these enforcement efforts.

In addition to developing its capability in the area of enforcement, the Unit will continue to provide consultative services on equity issues, both for the Commission and for the general public. In the coming year, the Unit will acquire additional staff whose consultative duties will include advising on special program remedies with goals and timetables, analysing and reviewing systems, advising the client community and delivering support to the staff in the field on equity issues. The Unit's overall con-

sultative service delivery will require a capacity in the area of data analysis and statistical methodology, and in the coming year, will proceed in developing this expertise. The Unit will consider the experiences of already established regulatory and statutory bodies, such as the Canadian Human Rights Commission, the Federal Contractors Program and the U.S. Equal Employment Opportunity Commission, in developing the enforcement and consultation services that will take the best advantage of present resources and data.

As part of its mandate to promote voluntary equity practices, the Unit has worked over the last year to develop policy guidelines on Special Programs (s.13 of the **Code**), to be of assistance to those employers, landlords, or service providers who wish to institute special programs "designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity". Employment equity programs are one type of special program.

The Commission will be utilizing these standards when recommending or evaluating special programs, including those where an order has been requested. Early in the 1990-91 fiscal year, the Commission will be publishing these Guidelines and making them available to the public.

The Unit has been actively involved in public education efforts aimed at explaining the Commission's position on systemic issues. Unit staff have spoken on many occasions to employer, employee and consumer groups, both within and outside of the public sector, including the Toronto Employment Equity Practitioners Association (TEEPA), the Personnel Association of Ontario, the Canadian Association of Rehabilitation Consultants, Persons United for Self-Help, WCB Municipal Users Group and the Human Resources Secretariat, to name just a few.

The Unit looks forward to bringing its staff up to full complement in the coming year, and to building on the initiatives for systemic equity it has already undertaken.



Catherine Frazee appeared on the CBC - TV program "Disability Network".

COMMUNICATIONS & EDUCATION

Director: Alan Shefman

In the first full year of operation, the Communications and Education Unit has seen tremendous development in all areas of its work.

The primary goals of the Communications and Education Unit are to communicate to the public through the media and direct contact, the policies and practises of the Commission as well as the rights and responsibilities contained within the **Code**. The Unit also provides training to the staff of the Commission to allow the agency to provide the most professional and efficient level of service possible to the people of Ontario.

Over the long term the prevention of discrimination can only be achieved through educating people about their rights. Good corporate citizens from both the private and public sectors must be informed of their responsibilities to allow them to comply with the demands of the **Code**. Individuals must be given the opportunity to understand not only what may contravene their rights, but also what they can do about it.

To attain this goal the Unit is responsible for:

- educational programming
- the creation of educational materials including videos and written material
- publication and distribution of a wide range of materials including brochures, guidelines, policies and fact sheets
- accessibility of Commission publications
- editing of all publications
- distribution of Board of Inquiry decisions
- publication of a monthly staff newsletter
- translation of publications
- professional development and policy training of staff
- new staff orientation program
- coordinating speaking requests for the Chief Commissioner and Commissioners
- preparation of speeches
- participation on the Commission Outreach Committee
- training programs for Ontario Public Service staff on the **Human Rights Code**
- special projects such as International Human Rights Day in December, the Commission's Anniversary on June 15, and public meetings of the Commission
- coordination of the Annual Report

- liaison with external networks on race relations
- media relations, including releases and conferences
- responding to media enquiries

In the area of education, one of the major endeavours of the Unit was organizing public forums in five different parts of the province on the **Guidelines for Assessing Accommodation Requirements for Persons with Disabilities**. This new policy, which emanates from the 1986 amendment to the **Code**, has demanded the most extensive program of public education undertaken by the Commission. In conjunction with the Advocacy Research Centre for the Handicapped, the Unit planned programs that allowed business, government and individuals across Ontario to get a better understanding of the extension of the interpretation of handicap in the **Code**. The program of seminars is scheduled to continue into the new fiscal year.

Also associated with the release of the **Accommodation Guidelines** was the development of a strategy of full accessibility for the document. This was the first publication produced by the Commission made available in English and French (other languages, on demand...Italian and Portuguese are now available), audio tape (in both languages) and computer disk. All publications produced by the Commission are now available in a range of formats.

In the past year, the Unit has responded to the development of a series of new or revised policies explaining the Commission's interpretation of the **Code**. Over 320,000 brochures, guidelines or policies were ordered. Even with many of these items arriving very late in the year or in the new fiscal year, over 130,000 publications were distributed.

The Commission is developing a comprehensive training program for its staff. This initiative has been recognized beyond our provincial boundaries with the election of Barbara Justason, the Unit's Education Coordinator, as chairperson of the Canadian Association of Statutory Human Rights Agencies' training subcommittee. At the same time, work is progressing on staff training on the policy on Racial Slurs and Harassment and Racial Jokes and the new Procedural Manual. It is expected the full training program will be in place in the fall of 1990.

The day-to-day work of the Unit in the area of communications consists in part of responding to the wide range of requests by the media and the public, for information on general and specific themes. As well, the Commission has embarked on a proactive approach to inform the public of our activities and its rights, by publicizing interesting and instructive Board of Inquiry decisions and settlements.

In December of 1989, in conjunction with International Human Rights Day, the Unit coordinated a public education and awareness program. Over 7,000 schools and municipalities as well as all colleges and universities, along with Members of the Provincial Parliament were sent information packages containing, in part, copies of the Annual Report and a Human Rights Day Proclamation prepared by the Commission. All recipients were asked to acknowledge International Human Rights Day and Week.

The Unit, as it matures, will continue to ensure that human rights remains an important issue before the public.

LEGAL

SERVICES

Acting Director: Mark Frawley

The Legal Services Unit assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation.

Working with Officers and Regional Managers, members of the Unit provide legal advice to assist in the processes of investigation and conciliation. A substantial amount of time is spent providing legal opinions on complaints going before the Commission and on other substantive and procedural issues relevant to the Commission. Members of the Unit attend Commission meetings to provide legal advice as required on decisions made by the Commission.

Once a Board of Inquiry is appointed, members of the Unit act as counsel to the Commission before such Boards, as well as before the Courts on matters of judicial review and on appeals.

Members of the Unit routinely respond to legal inquiries from the public and participate in workshops, seminars and conferences.

COMPLIANCE

The Compliance Unit is the largest Unit of the Commission, with members working at Headquarters and 15 district offices in seven regions in Ontario: North (Sudbury, Sault St. Marie, Thunder Bay, Timmins and Kenora), East (Ottawa and Kingston), Southwest (London, Kitchener and Windsor), Hamilton-Niagara (Hamilton and St. Catharines), Toronto West (Mississauga), Toronto East (Scarborough), and Toronto Central. Each region is headed by a Manager and staffed by professionals in the field of human rights.

The Unit is, for the most part, the public's first contact with the Commission. A primary activity of the staff is to handle intake, investigation and conciliation of the large number of complaints filed each year.

One of the main functions of the Unit is to promote the public policy of Ontario as enunciated in the Preamble to the **Code**, and to provide a variety of services to many individuals and groups, such as explaining the **Code** to employees in the public and private sectors, and conducting seminars for students and the general public, to enhance their awareness of human rights issues.

A major initiative in public education has been the presentation of the **Guidelines for Assessing Accommodation Requirements for Persons with Disabilities.** In conjunction with the Communications and Education Unit, regional staff members and Commissioners organized a series of forums in various parts of the province, to inform and educate the public and the business community about these new **Guidelines**, and their impact in the areas of employment, housing and services.

Recent efforts to streamline the work of the Unit involved the creation of a procedural manual and an operational plan to develop strategies for more efficient case processing.

The procedural manual will standardize procedures throughout the Commission's offices. It will be available to

the public, to provide a better understanding of how the Commission works in processing a complaint.

Other efforts within the Unit have addressed the need for information technology to facilitate communication around the province and to monitor case flow. Expansion of Unit staff and rationalizing job descriptions and responsibilities to reflect the complexity of our work was another major initiative. Steps were taken to hire Human Rights Assistants and additional staff in all regions. New positions of Regional Case Coordinators have been established to facilitate a province-wide Case Management Program designed to reduce case backlog.

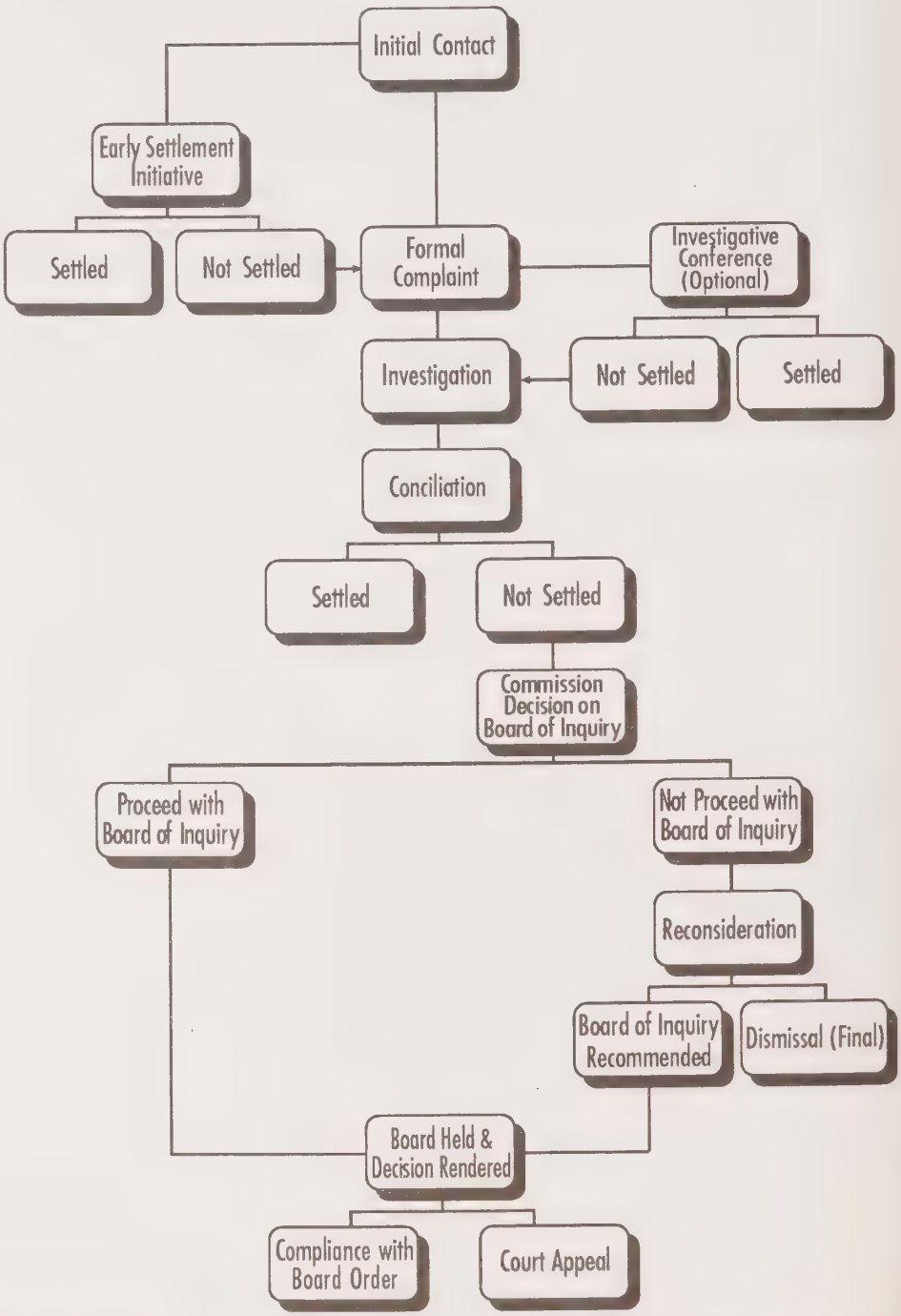
During the period of April 1, 1989 to March 31, 1990, the Commission received 61,901 inquiries. Over this period, the Commission received 1,996 formal complaints; 1,590 cases were closed, and the Commission was able to recover $1,704,647 for 409 complainants. Of those closed, 1,250 cases were settled, 117 dismissed by the Commission, 15 not dealt with pursuant to Section 33 of the **Code**, and 208 withdrawn by the complainants.

With additional resources, a conscientious and proactive public education program, and the implementation of the procedural manual and operational plan, it is expected that case resolution will be expedited and the compliance function greatly enhanced.



At a public forum held in Kingston, the Commission presented its **Guidelines for Assessing Accommodation Requirements for Persons with Disabilities** to the business and general community.

COMPLAINT PROCESS



DEVELOPMENTS

CASE EXAMPLES

The Ontario Human Rights Commission registers more complaints than any other provincial Commission or the federal Commission. The vast majority of complaints are resolved by a settlement between the complainant and the respondent, which is submitted to the Commission for approval. The Commission endeavours to use its power to approve settlements, to enforce the public interest elements raised by the specific complaint. Some complaints are withdrawn by the complainants. Others are dismissed by the Commission where the procedure of appointing a Board of Inquiry is not appropriate nor warranted by the evidence. Although only a relatively small percentage of complaints proceed to a Board of Inquiry, the precedent value of such decisions is enormous. One decision by a Board of Inquiry offering a broad and expansive interpretation of the **Code** can serve as substantial motivation to the public to bring their own attitudes and practices into line.

The following is an overview of recent significant settlements of complaints, Ontario Boards of Inquiry and Court decisions, and important developments in human rights law from other jurisdictions.

BOARDS OF INQUIRY

Chamberlin v. Stirling Honda

Mr. Chamberlin was dismissed from his employment at Stirling Honda after he took two weeks off on the advice of his doctor. At the time, his doctor provided a letter on Mr. Chamberlin's behalf, advising that Mr. Chamberlin was suffering from "severe emotional strain", and should have a few weeks off.

The respondents maintained that Mr. Chamberlin's employment was terminated because of poor performance.

The Board of Inquiry concluded that Mr. Chamberlin's condition — adjustment disorder with depressed mood — is a mental disorder under the Ontario Human Rights Code. The Board emphasized that the **Code** does not contain an exhaustive listing of mental disorders which can be considered a handicap. The Board also noted that the **Code** does not restrict the definition of handicap to severe mental disorders.

The Board of Inquiry was uncertain as to whether the cause of the pressures was associated with his employment. As a result of the uncertainty, the Board of Inquiry ordered compensation to Mr. Chamberlin in the amount of $2,500.

Engell v. Mount Sinai Hospital and Lanigan-Gilmour

Ms. Engell's employment with the hospital was terminated after she proceeded with holiday plans. Prior to her departure on vacation, Ms. Engell had received notification from the hospital that she could not take her holiday as planned, because of her lengthy absences in the past.

The complainant had been absent from work in the prior year, for two reasons: an absence related to multiple sclerosis, and an absence related to hyperemesis gravidarum during Ms. Engell's pregnancy.

The Board of Inquiry found that Ms. Engell's multiple sclerosis and hyperemesis gravidarum were factors in the hospital's decision to deny vacation leave.

Having found a breach of the **Code**, the respondents were ordered to pay Ms. Engell the sum of $7,200 for lost earnings, $1,000 for mental anguish, with interest on both amounts. In addition, the Board ordered rectification of Ms. Engell's personnel file and ordered the respondents to provide a letter of reference to her.

Ouimette v. Lily Cups Ltd.

The complainant was a probationary employee at Lily Cups Ltd. The company had an unwritten rule that any employee who was absent for three days during the probationary period would automatically be terminated. The complainant was absent for one day because of an alleged allergic reaction to aspirin, and for a further two days because she had the flu. The complainant was terminated because of these absences from work and alleged discrimination on the basis of handicap.

The Board of Inquiry held that the Commission failed to prove that the complainant had an allergic reaction.

The Board of Inquiry further held that commonplace and transitory illness like the flu could not be regarded as a handicap within the meaning of the **Code**. The Board stated that to regard the flu as a handicap would do violence to the high purposes of the protections afforded to persons with disabilities. The Board ordered that the respondents be indemnified by the Commission for all their legal costs.

Sinclair v. Peel Non-Profit Housing Corporation

The complainant, a single mother in receipt of family benefits allowance, had applied for a "rent geared to market" ("RGM") apartment unit in a building owned and operated by the Peel Non-Profit Housing Corporation ("PNPHC"). In order to qualify for RGM housing at PNPHC, applicants were required to satisfy a minimum income criterion. Because the complainant did not satisfy this criterion, her application was denied. The complainant filed a complaint with the Commission. She alleged that she had been discriminated against because she was in receipt of public assistance and because of her sex.

Following the appointment of a Board of Inquiry, the Commission, the complainant and PNPHC entered into a settlement agreement. As a result of this settlement, PNPHC has now introduced changes to its eligibility requirements that will make it easier for women and for people in receipt of public assistance to qualify for RGM housing at Peel, including:

- an applicant who can establish that he or she has the ability to pay the rent for an RGM unit will be eligible for RGM housing;
- PNPHC will make a good faith determination of an applicant's ability to pay the rent for an RGM unit;
- the fact that an applicant may devote up to 65 percent of his or her income to RGM rent will no longer constitute an automatic bar to eligibility for an RGM unit;
- an applicant can establish his or her ability to pay rent in a variety of ways, including the designation of a guarantor.

APPEALS

Ontario Court of Appeal

Airport Taxicab (Malton) Association and others v. Lucy Piazza and the Ontario Human Rights Commission

This appeal concerned the powers of a Board of Inquiry to order compensation. The Board of Inquiry initially awarded the complainant compensation for the full period of her unemployment, which had resulted from the discrimination. The Divisional Court reduced the amount of damages to an appropriate period of "reasonable notice", a concept under the common law of wrongful dismissal.

The Ontario Court of Appeal restored the decision of the Board of Inquiry, stating that the purpose of compensation under the **Code** is to restore a complainant as far as is reasonably possible to the position that the complainant would have been in had the discriminatory acts not occurred. The Court found that it was not appropriate to import into human rights jurisprudence, the limit on compensation which is imposed by the common law with respect to claims for wrongful dismissal.

Ontario Court of Appeal

Lanark, Leeds and Grenville Roman Catholic Separate School Board v. Ontario Human Rights Commission

This appeal relates to a complaint by the parents of three children with developmental disabilities, that they had been denied their right to a Catholic education. After succeeding before the Board of Inquiry, the complaint was dismissed by the Divisional Court. The Commission appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal because of mootness. The factual circumstances of the children had changed since the time of the complaint, so that restoring the Board's order would not be appropriate. Further, the specific sections of the **Code** at issue before the Board had been amended, so there was no important issue of principle to be decided by the Court of Appeal.

Ontario Court of Appeal

West End Construction Limited and David Scott v. Ontario Human Rights Commission, Bahjat Tabar, Chong Man Lee and Kyung S. Lee

This case was an appeal by the Ontario Human Rights Commission from a Divisional Court ruling that the two year limitation period in the **Limitations Act** applied to complaints under the **Code**. The Court of Appeal held that time periods under the **Limitations Act** do not apply to complaints under the **Code**. The Court noted that a human rights complaint differs from a traditional action in that a complainant has little control over the proceedings once he or she has filed a complaint. Further, discrimination is often a continuing practice rather than an isolated incident. Therefore a complaint under the **Code** does not create a cause of action which fits within the traditional format of the **Limitations Act**. The only time limitation applicable to human rights complaints is the discretionary one found in section 33(10)(d) of the **Code**.

SUPREME COURT OF CANADA

Brooks v. Canada Safeway Ltd.

The appellant, a cashier with Canada Safeway, became ill during her pregnancy and was unable to work. She was not entitled to receive benefits under Safeway's group insurance plan for the sole reason that she was within ten weeks of her estimated due date and was thus entitled to U.I.C. maternity benefits. In 1983, she filed a complaint with the Manitoba Human Rights Commission alleging discrimination on the basis of sex.

The Supreme Court of Canada held that unequal treatment on the basis of pregnancy was indeed discrimination on the basis of sex, reversing its earlier decision in **Bliss**. The Supreme Court enunciated its belief in the "fundamental importance" of pregnancy to society.

The Ontario Human Rights Code specifically provides that pregnancy-based discrimination is discrimination on the basis of sex. However, it also states that there is no violation of the **Code** if a group insurance plan complies with the **Employment Standards Act**. The **Employment Standards Act** permits unequal treatment in group insurance plans when the reason for the absence from work is related to pregnancy.

SUPREME COURT OF CANADA

Janzen and Govereau v. Platy Enterprises Ltd.

The two appellants were sexually harassed when they worked as waitresses in a restaurant owned by the respondent. The board of adjudication held that their rights were violated under the **Manitoba Human Rights Act** even though the Act did not list sexual harassment as a separate ground. The Court of Appeal held that the board had erred, saying that sexual harassment did not constitute discrimination on the basis of sex.

On appeal, the Supreme Court of Canada held that it is not necessary for all women to be harassed for sexual harassment to be a form of sex discrimination. The Court ruled that the women in this case were subject to a disadvantage because of their sex; male employees were not in the same position as the female employees, simply because they were men.

The Supreme Court further ruled that the corporate respondent was liable for the actions of its employees.

These two Supreme Court rulings may not be applicable in Ontario given the differences in the legislative provisions.



Chief Commissioner Frazee sharing a joke ith other guests at a banquet celebrating the 10th anniversary of the Chinese Canadian National Council.

JUDICIAL REVIEWS

Nishimura et al. v. Ontario Human Rights Commission

Ms. Nishimura and 12 other women who worked as inside advertising salespersons at the Toronto Star newspaper complained that they were discriminated against on the basis of sex because they were paid less than the outside advertising salespersons, most of whom were men.

In February, 1987 the Commission decided to not deal with the complaint as it considered complaints concerning failure to pay equal pay for work of equal value to be outside its jurisdiction. The complainants applied for judicial review of this decision. When the application was heard in September 1989, the Commission conceded that its earlier decision had been wrong.

The Divisional Court held that unequal pay for work of equal value can constitute sex discrimination contrary to sections 4(1), 8 and 10(1) of the **Code**. Whether it does constitute sex discrimination in a particular case is a matter for the Commission to decide.

In reaching its decision, the Court stressed that a broad and liberal construction is required when considering human rights legislation because of its quasi-constitutional status. In addition, a decision to dismiss a complaint as outside the jurisdiction of the Commission should only be reached in the clearest of cases. The question of whether structural and pay discrimination are covered by the language of the **Code** is one which should be decided by the Commission itself. Finally, the existence of the **Employment Standards Act** and the **Pay Equity Act** does not remove complaints concerning equal pay from the jurisdiction of the **Code**.

Ontario Human Rights Commission v. Peel Board of Education

On March 5, 1990, the Divisional Court held that public education is a "service" and, therefore, subject to section 1 of the Ontario Human Rights Code. Furthermore, the Court emphasized that if the **Education Act** is construed so as to permit discriminatory action, subsection 46(2) of the **Code** would operate so as to prevent such a construction of the **Education Act**.

The issue arose in a case involving the Ontario Human Rights Commission and a school board. As a result of the Divisional Court ruling, a Board of Inquiry was permitted to continue its hearings.

This decision brings the law in Ontario into line with that in many other provinces, where education is also subject to the principles of human rights legislation.

HUMAN RIGHTS

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(as at March 31, 1990)

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Collins, Geoffrey
Della-Nebbia, Nancy
Downey, Terry
Doyle, Dee
Goh, Andre
Johnson, Bev
McKenzie, Patrice
Miller, Nina
Moore, Maisie
Obermuller, Diane
Speranzini, Gary
Wells, Stanley
Williams, Ashworth
Yohannes, Girma



Toni Silberman, Susan Forrest and Daphne Dales, all of Communications & Education Unit, review newly produced AIDS publication.

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Seales, Robert
Schnippering, Roland
Thoo, Valerie
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Marcuz, Vic
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Molloy, Peggy
Samuel, Mary
Sibblies, Geanine
Soondarsingh, Vijay

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Kalimootoo, Roxanne
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Cotton, W. Murray
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Koushik, Aruna
McKinnon, Christopher
Riberdy, Joyce

HUMAN RIGHTS

COMMISSION OFFICES

HEAD OFFICE
400 University Avenue
Toronto, Ontario
M7A 2R9
(416) 965-6841
TDD (416) 965-6871

TORONTO CENTRAL
595 Bay Street, 4th Floor
Toronto
M5G 2C2
(416) 326-9511

TORONTO EAST
2500 Lawrence Avenue East
2nd Floor, Scarborough
M1P 2R7
(416) 750-3575

TORONTO WEST
2 Robert Speck Parkway
Suite 310, Mississauga
L4Z 1H8
(416) 273-7811

EASTERN REGION

Ottawa
2197 Riverside Drive,
Ste.301
K1H 7X3
(613) 738-2801

Kingston
80 Queen Street, Ste. 202
K7K 6W7
(613) 548-6750

HAMILTON/ NIAGARA REGION

Hamilton
119 King Street West,
8th Floor
L8N 3Z9
(416) 521-7870

St. Catharines
1 St. Paul, Ste.603
L2R 7L4
(416) 684-7406

SOUTHWEST REGION

London
205 Oxford Street East,
2nd Floor
N6A 5G6
(519) 438-0076

Kitchener
824 King Street West,
4th Floor
(519) 570-9622

Windsor
500 Ouellette Avenue,
Ste.305
N9A 1B3
(519) 256-8278

NORTHERN REGION

Sudbury
199 Larch Street, 6th Floor
P3E 5P9
(705) 675-4455

Sault Ste. Marie
390 Bay Street, 3rd Floor
P6A 1X2
(705) 942-8417

Thunder Bay
1825 East Arthur Street
P7E 5N7
(807) 623-9119

Timmins
273 Third Avenue, Ste.204
P4N 1E2
(705) 267-6231

Kenora
227 Second Street South,
3rd Floor
P9N 1G1
(807) 468-5568


NORTHERN
Kenora
Thunder Bay
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Toronto
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NIAGARA
• Office location

TABLE 1

COMPLAINTS RECEIVED BY REGION OF REGISTRATION & GROUND

Region:	Race/Colour	*Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	No Grounds	Total	Percentage
Eastern	**20**	**10**	**9**	**34**	**18**	**7**	**14**	**15**	**10**	**138**	**9**	**-**	**1**	**-**	**-**	**285**	**14%**
Hamilton/Niagara	21	6	8	31	16	5	7	8	11	123	-	1	6	-	-	243	12%
Northern	**28**	**6**	**2**	**29**	**9**	**1**	**16**	**8**	**7**	**115**	**7**	**-**	**2**	**1**	**-**	**231**	**12%**
Southwestern	45	3	3	34	24	3	17	10	4	87	3	-	1	-	-	234	12%
UFH/Systemic	**1**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**11**	**-**	**-**	**-**	**-**	**-**	**12**	**1%**
Toronto Central	43	29	13	31	18	9	14	12	14	83	2	1	11	1	-	281	14%
Toronto East	**43**	**10**	**5**	**43**	**22**	**4**	**29**	**4**	**17**	**171**	**4**	**-**	**3**	**-**	**-**	**355**	**18%**
Toronto West	61	13	8	51	23	4	11	9	16	152	1	-	6	-	-	355	18%
Total	**262**	**77**	**48**	**253**	**130**	**33**	**108**	**66**	**79**	**880**	**26**	**2**	**30**	**2**	**-**	**1996**	
Percentage	13%	4%	2%	13%	7%	2%	5%	3%	4%	44%	1%	-	2%	-	-		

*** includes citizenship, ancestry, place of origin**

TABLE 2

COMPLAINTS RECEIVED BY GROUND & PROVISION

Code Provisions:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal	Breach of Settlement	No Grounds (S.33)	Total	Percentage
Services	34	16	15	14	-	15	7	12	7	71	-	-	-	1	-	192	10%
Accommodation	**19**	**8**	**2**	**11**	**6**	**5**	**14**	**17**	**51**	**24**	**26**	-	-	-	-	**183**	**9%**
Contracts	3	-	1	-	-	-	-	1	1	1	-	-	-	-	-	7	-
Employment	**203**	**52**	**28**	**224**	**124**	**13**	**86**	**35**	**20**	**781**	-	**2**	-	-	-	**1568**	**79%**
Vocational Assoc.	3	1	2	4	-	-	1	1	-	3	-	-	-	-	-	15	1%
Reprisal	-	-	-	-	-	-	-	-	-	-	-	-	**30**	-	-	**30**	**2%**
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	
Total	**262**	**77**	**48**	**253**	**130**	**33**	**108**	**66**	**79**	**880**	**26**	**2**	**30**	**2**	-	**1996**	
Percentage	13%	4%	2%	13%	7%	2%	5%	3%	4%	44%	1%	-	2%	-	-		

Extension of Code Provisions Also Cited in Complaints:

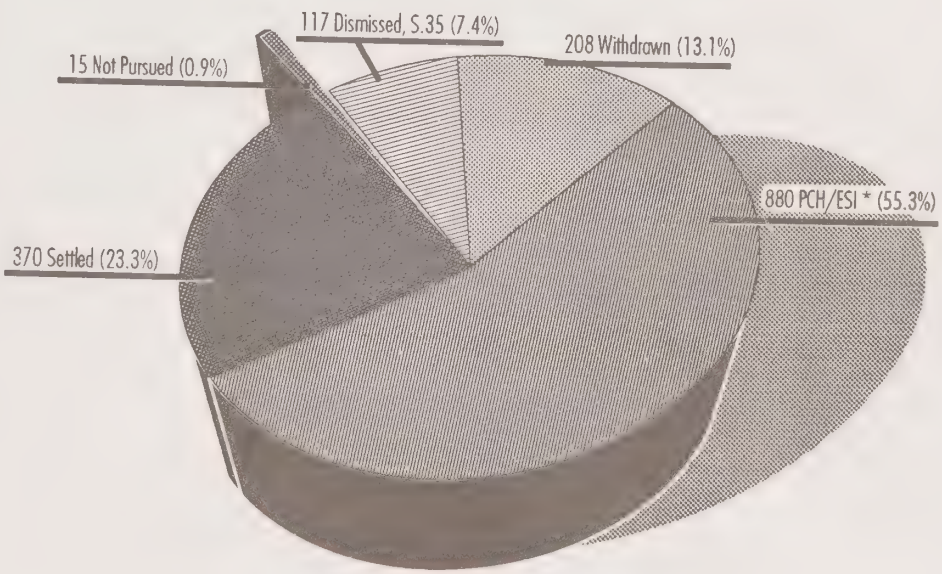
Discrimination																	
Constructive	**2**	-	-	-	-	-	-	-	-	**1**	**1**	-	**1**	-	-	**5**	
Association	-	-	1	-	1	-	-	-	-	2	-	-	-	-	-	4	
Application Forms	-	-	-	-	-	-	-	-	**1**	**2**	-	-	-	-	-	**3**	
Insurance	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
Total	**2**	-	**1**	-	**1**	**1**	-	-	**1**	**5**	**1**	-	**1**	-	-	**13**	

TABLE 3

COMPLAINTS RECEIVED BY TYPE OF HANDICAP & PROVISION

Type of Handicap:	Services	Accommodation	Contracts	Employment	Vocational Associations	Total	Percentage
Sensory (vision/hearing/speech/etc. impairment)	**13**	**5**	**-**	**21**	**-**	**39**	**4%**
Respiratory (asthma/lung disease/etc.)	-	1	-	32	-	33	4%
Limbs & Digits (amputation/impairment of limb/digit/etc.)	**5**	**3**	**1**	**124**	**-**	**133**	**15%**
Cardiovascular (heart disease/hypertension/stroke/etc.)	-	1	-	15	-	16	2%
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	**8**	**3**	**-**	**12**	**-**	**23**	**3%**
Neurological (epilepsy/seizures/brain injury/etc.)	6	1	-	24	-	31	4%
General Diseases or Disorders (allergies/cancer/diabetes/etc.)	**19**	**4**	**-**	**363**	**-**	**386**	**44%**
Miscellaneous (multiple handicaps/obesity/sick leave/etc.)	1	-	-	67	3	71	8%
Learning Disability (dyslexia/etc.)	**-**	**1**	**-**	**4**	**-**	**5**	**1%**
Mental Retardation (or mental impairment)	4	1	-	5	-	10	1%
Mental Disorder (psychiatric illness/personality disorders, addictions/etc.)	**1**	**2**	**-**	**69**	**-**	**72**	**8%**
Claim Under the Workers' Compensation Act	2	-	-	44	-	46	5%
Reasonable Accommodation (S.16)	**12**	**2**	**-**	**1**	**-**	**15**	**2%**
Total	**71**	**24**	**1**	**781**	**3**	**880**	
Percentage	8%	3%	-	89%	-		

TABLE 4 DISPOSITION OF CASES CLOSED



*Priority Case Handling/ Early Settlement Initiative

TABLE 5

SETTLEMENTS EFFECTED BY GROUND

Ground:	Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$ 469,205	32	44	7	1	12	39	10	27	68
Ethnic Origin	**62,981**	**2**	**5**	**3**	**-**	**1**	**4**	**2**	**9**	**10**
Creed	1,894	2	1	4	-	-	6	2	4	3
Sex & Pregnancy	**114,061**	**57**	**45**	**20**	**2**	**3**	**36**	**14**	**19**	**57**
Sexual Harassment	198,916	51	11	3	1	13	20	9	22	56
Sexual Orientation	**250**	**1**	**3**	**-**	**-**	**1**	**6**	**1**	**5**	**10**
Age	214,005	25	9	6	-	5	23	1	11	27
Marital Status	**8,582**	**13**	**8**	**1**	**-**	**1**	**10**	**1**	**10**	**8**
Family Status	9,058	9	10	5	-	1	7	2	6	14
Handicap	**577,189**	**213**	**168**	**45**	**3**	**18**	**99**	**55**	**38**	**196**
Receipt of Public Assistance	-	-	4	3	-	1	2	-	1	2
Record of Offences	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**1**
Others*	48,506	4	4	1	1	1	2	1	4	3
TOTAL	**$ 1,704,647**	**409**	**312**	**98**	**8**	**57**	**253**	**98**	**156**	**455**

* Reprisal, Breach of Settlement, No Grounds.

TABLE 6

COMPLAINTS CLOSED BY DISPOSITION, GROUND & PROVISION

Type of Disposition:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
EMPLOYMENT															
Settled	**112**	**17**	**16**	**162**	**93**	**8**	**60**	**21**	**9**	**500**	**-**	**1**	**1**	**1000**	**78%**
Dismissed/Not Pursued	18	5	3	11	5	2	10	2	1	43	-	1	-	101	8%
Withdrawn	**24**	**4**	**3**	**26**	**24**	**-**	**21**	**3**	**4**	**71**	**-**	**-**	**-**	**180**	**14%**
Sub-Total	154	26	22	199	122	10	91	26	14	614	-	2	1	1281	
ACCOMMODATION															
Settled	**9**	**2**	**-**	**8**	**1**	**2**	**6**	**12**	**28**	**18**	**18**	**-**	**-**	**104**	**84%**
Dismissed/Not Pursued	2	-	-	-	-	-	2	1	3	1	2	-	-	11	9%
Withdrawn	**3**	**-**	**-**	**2**	**-**	**-**	**-**	**1**	**3**	**-**	**-**	**-**	**-**	**9**	**7%**
Sub-Total	14	2	-	10	1	2	8	14	34	19	20	-	-	124	
SERVICES															
Settled	**32**	**10**	**10**	**7**	**-**	**6**	**7**	**6**	**3**	**53**	**-**	**-**	**-**	**134**	**82%**
Dismissed/Not Pursued	5	2	1	-	-	-	-	-	-	7	-	-	1	16	10%
Withdrawn	**4**	**-**	**-**	**1**	**-**	**-**	**-**	**1**	**-**	**7**	**-**	**-**	**-**	**13**	**8%**
Sub-Total	41	12	11	8	-	6	7	7	3	67	-	-	1	163	
CONTRACTS/VOCATIONAL ASSOCIATIONS/ REPRISAL/BREACH OF SETTLEMENT															
Settled	**1**	**-**	**-**	**-**	**-**	**-**	**1**	**1**	**-**	**-**	**-**	**-**	**11**	**14**	**64%**
Dismissed/Not Pursued	-	1	-	-	-	-	-	-	-	1	-	-	2	4	18%
Withdrawn	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**1**	**-**	**-**	**-**	**-**	**3**	**4**	**18%**
Sub-Total	1	1	-	-	-	-	1	2	-	1	-	-	16	22	

TABLE 7

COMPLAINTS CLOSED BY DISPOSITION, SEX OF COMPLAINANT & GROUND

MALES	Settled		Dismissed		Withdrawn		Total
	Nos.	%	Nos.	%	Nos.	%	
Race/Colour	**96**	**(74)**	**16**	**(12)**	**18**	**(14)**	**130**
Ethnic Origin	21	(68)	7	(23)	3	(10)	31
Creed	**15**	**(75)**	**3**	**(15)**	**2**	**(10)**	**20**
Sex & Pregnancy	32	(82)	5	(13)	2	(5)	39
Sexual Harassment	**2**	**(67)**	**-**	**(-)**	**1**	**(33)**	**3**
Age	42	(71)	5	(8)	12	(20)	59
Marital Status	**10**	**(77)**	**1**	**(8)**	**2**	**(15)**	**13**
Family Status	10	(83)	1	(8)	1	(8)	12
Handicap	**302**	**(77)**	**35**	**(9)**	**55**	**(14)**	**392**
Public Assistance	5	(100)	-	(-)	-	(-)	5
Record of Offences	**1**	**(50)**	**1**	**(50)**	**-**	**(-)**	**2**
Others *	5	(56)	1	(11)	3	(33)	9
Total	**541**		**75**		**99**		**715**
Percentage	76		10		14		

FEMALES	Settled		Dismissed		Withdrawn		Total
	Nos.	%	Nos.	%	Nos.	%	
Race/Colour	**60**	**(72)**	**10**	**(12)**	**13**	**(16)**	**83**
Ethnic Origin	7	(78)	1	(11)	1	(11)	9
Creed	**10**	**(83)**	**1**	**(8)**	**1**	**(8)**	**12**
Sex & Pregnancy	139	(80)	6	(3)	28	(16)	173
Sexual Harassment	**92**	**(77)**	**5**	**(4)**	**23**	**(19)**	**120**
Age	31	(66)	7	(15)	9	(19)	47
Marital Status	**29**	**(83)**	**2**	**(6)**	**4**	**(11)**	**35**
Family Status	30	(77)	3	(8)	6	(15)	39
Handicap	**265**	**(87)**	**17**	**(6)**	**24**	**(8)**	**306**
Public Assistance	13	(87)	2	(13)	-	(-)	15
Record of Offences	**-**	**(-)**	**-**	**(-)**	**-**	**(-)**	**-**
Others *	6	(86)	1	(14)	-	(-)	7
Total	**682**		**55**		**109**		**846**
Percentage	81		7		13		

* Sexual Orientation, Reprisal, Breach of Settlement and No Grounds (Section 33).

TABLE 8

EMPLOYMENT COMPLAINTS CLOSED BY DISPOSITION & GROUND

Type of Disposition/ Stage of Employment:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
RECRUITMENT AND HIRING													
Settled	**24**	**4**	**5**	**40**	**-**	**27**	**8**	**2**	**42**	**-**	**1**	**153**	**81**
Dismissed/Not Pursued	4	2	-	2	-	3	1	-	3	-	-	15	8
Withdrawn	**3**	**1**	**-**	**4**	**-**	**8**	**1**	**-**	**3**	**-**	**-**	**20**	**11**
Sub-Total	31	7	5	46	-	38	10	2	48	-	1	188	100
Percentage	**20**	**27**	**23**	**23**	**-**	**42**	**38**	**14**	**8**	**-**	**100**	**16**	
TERMINATION													
Settled	**49**	**6**	**8**	**87**	**2**	**25**	**8**	**7**	**368**	**1**	**-**	**561**	**78**
Dismissed/Not Pursued	8	1	-	7	1	5	1	1	35	1	-	60	8
Withdrawn	**12**	**2**	**3**	**12**	**-**	**7**	**1**	**4**	**56**	**-**	**-**	**97**	**14**
Sub-Total	69	9	11	106	3	37	10	12	459	2	-	718	100
Percentage	**45**	**35**	**50**	**53**	**30**	**41**	**38**	**86**	**75**	**100**	**-**	**62**	
DURING EMPLOYMENT													
Settled	**39**	**7**	**3**	**35**	**6**	**8**	**5**	**-**	**90**	**-**	**-**	**193**	**76**
Dismissed/Not Pursued	6	2	3	2	1	2	-	-	5	-	-	21	8
Withdrawn	**9**	**1**	**-**	**10**	**-**	**6**	**1**	**-**	**12**	**-**	**-**	**39**	**15**
Sub-Total	54	10	6	47	7	16	6	-	107	-	-	253	100
Percentage	**35**	**38**	**27**	**24**	**70**	**18**	**23**	**-**	**17**	**-**	**-**	**22**	
Total	**154**	**26**	**22**	**199**	**10**	**91**	**26**	**14**	**614**	**2**	**1**	**1159**	

TABLE 9

EMPLOYMENT COMPLAINTS CLOSED BY TYPE OF WORK & GROUND

Type of Work:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
Professional/Managerial/Technical	40	7	4	35	20	3	29	5	2	79	-	-	224	18
(Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)														
Sales	9	4	3	34	18	-	10	4	1	51	-	-	134	11
(Sales Representative, Buyer, Sales Clerk, etc.)														
Clerical	20	3	2	51	29	4	19	8	5	85	-	-	226	18
(Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)														
Crafts and Foremen/Women	15	3	4	20	8	-	5	1	1	50	-	-	107	8
(Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)														
Operatives	15	3	1	8	6	-	2	-	-	75	1	-	111	9
(Punch Press/Lathe/Machine/Crane Operator, Welder, etc.)														
Services	16	4	5	27	22	2	10	4	2	82	-	-	174	14
(Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)														
Labour/General	39	2	3	24	19	1	16	4	3	192	1	1	305	23
(Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)														
Total	**154**	**26**	**22**	**199**	**122**	**10**	**91**	**26**	**14**	**614**	**2**	**1**	**1281**	

TABLE 10

CASES CLOSED BY RESPONDENTS' TYPE OF INDUSTRY & GROUNDS

Type of Industry:	Race/Colour	Ethnic Origin	Creed	Sex and Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement/No Grounds	Total	Percentage
Natural Resources	1	1	-	1	-	-	4	-	1	13	-	-	-	21	1
Manufacturing															
Metals/Parts/Machinery	11	-	1	5	5	-	9	3	2	59	-	1	-	96	
Food/Tobacco	3	-	-	4	1	-	3	-	-	27	-	-	-	38	
Wood/Furniture/Paper	20	-	2	4	2	-	1	-	-	31	-	-	-	60	
Automotive/Aircraft	12	1	1	7	3	-	-	1	1	31	-	-	-	57	
Electrical	2	-	-	2	2	-	2	-	-	18	-	-	1	27	
Others	15	1	-	10	17	4	11	2	2	83	-	-	-	145	
Sub-Total	63	2	4	32	30	4	26	6	5	249	-	1	1	423	27
Construction	1	-	1	-	2	-	-	-	-	12	-	-	-	16	1
Transportation/Communications/ Utilities	9	1	1	10	4	1	5	1	1	26	-	1	1	61	4
Trade and Retail	35	8	5	50	31	-	13	5	2	99	1	-	3	252	16
Finance, Insurance, Real Estate	19	3	3	17	2	3	13	20	31	45	18	-	2	176	11
Community/Business/Personal Services															
Schools/Colleges/Universities	12	1	1	2	2	-	8	1	1	22	-	-	2	52	
Hospitals/Physicians	17	-	2	15	2	1	13	2	2	59	-	-	2	115	
Employment Agencies	1	-	-	1	1	-	2	-	-	2	-	-	-	7	
Hotels/Restaurants	17	10	3	23	19	3	4	5	2	60	-	-	3	149	
Others	20	12	9	50	26	4	9	8	5	76	1	-	2	222	
Sub-Total	67	23	15	91	50	8	36	16	10	219	1	-	9	545	34
Public Administration	15	3	4	16	4	2	10	1	1	38	-	-	2	96	6
Total	210	41	33	217	123	18	107	49	51	701	20	2	18	1590	100

TABLE 11

BOARDS OF INQUIRY APPOINTED & COMPLETED

	1988/89	1989/90
Boards Appointed	**34**	**21**
Boards Completed:	28	19
Pre-hearing Settlements	**15**	**10**
Decisions for Complainant	10	5
Decisions for Respondent	**3**	**4**
Board Decisions Under Appeal	6	7

TABLE 12

INQUIRIES, VOLUNTARY COMPLIANCE & PUBLIC EDUCATION

	1988/89	1989/90
Inquiries	**60,440**	**61,901**
Referrals	12,652	13,594
Informal Resolutions	**98**	**56**
Application Form Reviews	727	470
Advertising Reviews	**170**	**138**
Exemptions*	96	51
Public Education Activities	**556**	**402**

***the Commission no longer grants what used to be known as Exemptions.**

TABLEAU 11

COMMISSIONS D'ENQUÊTE

	1988-1989	1989-1990
Commissions nommées	**21**	**34**
Audiences tenues :	19	28
Règlements intervenus avant l'audience	**10**	**15**
Décisions favorables au plaignant	5	10
Décisions favorables à l'intimé	**4**	**3**
Décisions en appel	7	6

TABLEAU 12

DEMANDES de RENSEIGNEMENTS, OBSERVANCE SPONTANÉE du CODE et ÉDUCATION du PUBLIC

	1988-1989	1989-1990
Demandes de renseignements	**61,901**	**60,440**
Recommandations	13,594	12,652
Règlements officieux	**56**	**98**
Révision de formules de demande d'emploi	470	727
Révision d'annonces	**138**	**170**
Exemptions*	51	96
Activités d'éducation du public	**402**	**556**

*La Commission n'accorde plus ce qu'on appelait auparavant des exonérations.

TABLEAU 10

RÉPARTITION des PLAINTES CLASSÉES, par SECTEUR INDUSTRIEL et MOTIF de DISCRIMINATION

Secteur industriel :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles ou violation du règlement intervenu ou aucun motif	Total	Pourcentage
Richesses naturelles	**1**	**1**	**-**	**1**	**-**	**-**	**4**	**-**	**1**	**13**	**-**	**-**	**-**	**21**	**1**
Secteur manufacturier															
Métaux, pièces, machines	**11**	**-**	**1**	**5**	**5**	**-**	**9**	**3**	**2**	**59**	**-**	**1**	**-**	**96**	
Aliments, tabac	3	-	-	4	1	-	3	-	-	27	-	-	-	38	
Bois, ameublement, papier		**20**	**-**	**2**	**4**	**2**	**-**	**1**	**-**	**-**	**31**	**-**	**-**	**-**	**60**
Automobile, aéronautique	12	1	1	7	3	-	-	1	1	31	-	-	-	57	
Appareils électriques	**2**	**-**	**-**	**2**	**2**	**-**	**2**	**-**	**-**	**18**	**-**	**-**	**1**	**27**	
Autres	15	1	-	10	17	4	11	2	2	83	-	-	-	145	
Total partiel	**63**	**2**	**4**	**32**	**30**	**4**	**26**	**6**	**5**	**249**	**-**	**1**	**1**	**423**	**27**
Construction	1	-	1	-	2	-	-	-	-	12	-	-	-	16	1
Transport, communications, services publics	**9**	**1**	**1**	**10**	**4**	**1**	**5**	**1**	**1**	**26**	**-**	**1**	**1**	**61**	**4**
Vente au détail	35	8	5	50	31	-	13	5	2	99	1	-	3	252	16
Finance, assurance, immobilier	**19**	**3**	**3**	**17**	**2**	**3**	**13**	**20**	**31**	**45**	**18**	**-**	**2**	**176**	**11**
Services communautaires, d'affaires et personnels															
Écoles, collèges et universités		12	1	1	2	2	-	8	1	1	22	-	-	2	52
Hôpitaux et médecins	**17**	**-**	**2**	**15**	**2**	**1**	**13**	**2**	**2**	**59**	**-**	**-**	**2**	**115**	
Agences de placement	1	-	-	1	1	-	2	-	-	2	-	-	-	7	
Hôtels et restaurants	**17**	**10**	**3**	**23**	**19**	**3**	**4**	**5**	**2**	**60**	**-**	**-**	**3**	**149**	
Autres	20	12	9	50	26	4	9	8	5	76	1	-	2	222	
Total partiel	**67**	**23**	**15**	**91**	**50**	**8**	**36**	**16**	**10**	**219**	**1**	**-**	**9**	**545**	**34**
Administration publique	15	3	4	16	4	2	10	1	1	38	-	-	2	96	6
Total	**210**	**41**	**33**	**217**	**123**	**18**	**107**	**49**	**51**	**701**	**20**	**2**	**18**	**1590**	**100**

TABLEAU 9

RÉPARTITION des PLAINTES CLASSÉES, par TYPE d'EMPLOI et MOTIF de DISCRIMINATION

Type d'emploi :	Représailles ou violation du règlement intervenu ou aucun motif	Existence d'un casier judiciaire	Handicap	État familial	État matrimonial	Âge	Orientation sexuelle	Harcèlement sexuel	Sexe et grossesse	Croyance	Origine ethnique	Race ou couleur	Total	Pourcentage
Professions libérales, gestion, technique	40	7	4	35	20	3	29	5	2	79	-	-	224	18
(avocats, techniciens, cadres, enseignants, inspecteurs, infirmiers, etc.)														
Ventes	9	4	3	34	18	-	10	4	1	51	-	-	134	11
(représentants commerciaux, responsables des achats, commis, etc.)														
Travail de bureau	20	3	2	51	29	4	19	8	5	85	-	-	226	18
(dactylos, commis au classement ou aux écritures, réceptionnistes, perforateurs, etc.)														
Artisans et contremaîtres	15	3	4	20	8	-	5	1	1	50	-	-	107	8
(plombiers, boulangers, coiffeurs, chef d'équipe, mécaniciens, etc.)														
Opérateurs	15	3	1	8	6	-	2	-	-	75	1	-	111	9
(opérateurs de presse à découper, de tour, de machines, conducteurs de grue, soudeurs, etc.)														
Services	16	4	5	27	22	2	10	4	2	82	-	-	174	14
(serveurs et serveuses, aides ménagères, gardiens de sécurité, surintendants d'immeubles, etc.)														
Travail général	39	2	3	24	19	1	16	4	3	192	1	1	305	23
(conducteurs, expéditionnaires, nettoyeurs, ouvriers de chaînes de montage, manœuvres, etc.)														
Total	**154**	**26**	**22**	**199**	**122**	**10**	**91**	**26**	**14**	**614**	**2**	**1**	**1281**	

TABLEAU 8

RÉPARTITION des PLAINTES par TYPE de RÈGLEMENT et MOTIF de DISCRIMINATION en MATIÈRE d'EMPLOI

Type de règlement :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	Existence d'un casier judiciaire	Représailles ou violation de règlement intervenu ou aucun motif	Total	Pourcentage
RECRUTEMENT ET EMBAUCHAGE													
Plaintes réglées	24	4	5	40	-	27	8	2	42	-	1	153	81
Plaintes rejetées/classées	**4**	**2**	**-**	**2**	**-**	**3**	**1**	**-**	**3**	**-**	**-**	**15**	**8**
Plaintes retirées	3	1	-	4	-	8	1	-	3	-	-	20	11
Total partiel	**31**	**7**	**5**	**46**	**-**	**38**	**10**	**2**	**48**	**-**	**1**	**188**	**100**
Pourcentage	20	27	23	23	-	42	38	14	8	-	100	16	
CESSATION D'EMPLOI													
Plaintes réglées	**49**	**6**	**8**	**87**	**2**	**25**	**8**	**7**	**368**	**1**	**-**	**561**	**78**
Plaintes rejetées/classées	8	1	-	7	1	5	1	1	35	1	-	60	8
Plaintes retirées	**12**	**2**	**3**	**12**	**-**	**7**	**1**	**4**	**56**	**-**	**-**	**97**	**14**
Total partiel	69	9	11	106	3	37	10	12	459	2	-	718	100
Pourcentage	**45**	**35**	**50**	**53**	**30**	**41**	**38**	**86**	**75**	**100**	**-**	**62**	
EN COURS D'EMPLOI													
Plaintes réglées	39	7	3	35	6	8	5	-	90	-	-	193	76
Plaintes rejetées/classées	**6**	**2**	**3**	**2**	**1**	**2**	**-**	**-**	**5**	**-**	**-**	**21**	**8**
Plaintes retirées	9	1	-	10	-	6	1	-	12	-	-	39	15
Total partiel	**54**	**10**	**6**	**47**	**7**	**16**	**6**	**-**	**107**	**-**	**-**	**253**	**100**
Pourcentage	35	38	27	24	70	18	23	-	17	-	-	22	
Total	**154**	**26**	**22**	**199**	**10**	**91**	**26**	**14**	**614**	**2**	**1**	**1159**	
Pourcentage	100	100	100	100	100	100	100	100	100	100	100	100	

TABLEAU 7

RÉPARTITION des PLAINTES selon le TYPE de RÈGLEMENT, le SEXE du PLAIGNANT et le MOTIF de DISCRIMINATION

HOMMES	Réglées		Rejetées		Retirées		Total
	Nbre	%	Nbre	%	Nbre	%	
Race ou couleur	96	(74)	16	(12)	18	(14)	130
Origine ethnique	**21**	**(68)**	**7**	**(23)**	**3**	**(10)**	**31**
Croyance	15	(75)	3	(15)	2	(10)	20
Sexe et grossesse	**32**	**(82)**	**5**	**(13)**	**2**	**(5)**	**39**
Harcèlement sexuel	2	(67)	-	(-)	1	(33)	3
Âge	**42**	**(71)**	**5**	**(8)**	**12**	**(20)**	**59**
État matrimonial	10	(77)	1	(8)	2	(15)	13
État familial	**10**	**(83)**	**1**	**(8)**	**1**	**(8)**	**12**
Handicap	302	(77)	35	(9)	55	(14)	392
État d'assisté social	**5**	**(100)**	**-**	**(-)**	**-**	**(-)**	**5**
Existence d'un casier judiciaire	1	(50)	1	(50)	-	(-)	2
Divers *	**5**	**(56)**	**1**	**(11)**	**3**	**(33)**	**9**
Total	**541**		**75**		**99**		**715**
Pourcentage	76		10		14		

FEMMES	Réglées		Rejetées		Retirées		Total
	Nbre	%	Nbre	%	Nbre	%	
Race ou couleur	60	(72)	10	(12)	13	(16)	83
Origine ethnique	**7**	**(78)**	**1**	**(11)**	**1**	**(11)**	**9**
Croyance	10	(83)	1	(8)	1	(8)	12
Sexe et grossesse	**139**	**(80)**	**6**	**(3)**	**28**	**(16)**	**173**
Harcèlement sexuel	92	(77)	5	(4)	23	(19)	120
Âge	**31**	**(66)**	**7**	**(15)**	**9**	**(19)**	**47**
État matrimonial	29	(83)	2	(6)	4	(11)	35
État familial	**30**	**(77)**	**3**	**(8)**	**6**	**(15)**	**39**
Handicap	265	(87)	17	(6)	24	(8)	306
État d'assisté social	**13**	**(87)**	**2**	**(13)**	**-**	**(-)**	**15**
Existence d'un casier judiciaire	-	(-)	-	(-)	-	(-)	-
Divers *	**6**	**(86)**	**1**	**(14)**	**-**	**(-)**	**7**
Total	**682**		**55**		**109**		**846**
Pourcentage	81		7		13		

*** Orientation sexuelle, représailles, violation du règlement intervenu, aucun motif (article 33)**

TABLEAU 6

RÉPARTITION des PLAINTES par TYPE de RÈGLEMENT, MOTIF de DISCRIMINATION et DOMAINE

Type de règlement :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles ou violation du règlement intervenu ou aucun motif	Total	Pourcentage
EMPLOI															
Plaintes réglées	112	17	16	162	93	8	60	21	9	500	-	1	1	1000	78%
Plaintes rejetées/classées	**18**	**5**	**3**	**11**	**5**	**2**	**10**	**2**	**1**	**43**	-	**1**	-	**101**	**8%**
Plaintes retirées	24	4	3	26	24	-	21	3	4	71	-	-	-	180	14%
Total partiel	**154**	**26**	**22**	**199**	**122**	**10**	**91**	**26**	**14**	**614**	-	**2**	**1**	**1281**	
LOGEMENT															
Plaintes réglées	9	2	-	8	1	2	6	12	28	18	18	-	-	104	84%
Plaintes rejetées/classées	**2**	-	-	-	-	-	**2**	**1**	**3**	**1**	**2**	-	-	**11**	**9%**
Plaintes retirées	3	-	-	2	-	-	-	1	3	-	-	-	-	9	7%
Total partiel	**14**	**2**	-	**10**	**1**	**2**	**8**	**14**	**34**	**19**	**20**	-	-	**124**	
SERVICES															
Plaintes réglées	32	10	10	7	-	6	7	6	3	53	-	-	-	134	82%
Plaintes rejetées/classées	**5**	**2**	**1**	-	-	-	-	-	-	**7**	-	-	**1**	**16**	**10%**
Plaintes retirées	4	-	-	1	-	-	-	1	-	7	-	-	-	13	8%
Total partiel	**41**	**12**	**11**	**8**	-	**6**	**7**	**7**	**3**	**67**	-	-	**1**	**163**	
CONTRATS, ASSOCIATIONS PROFESSIONNELLES, REPRÉSAILLES, VIOLATION DU RÈGLEMENT INTERVENU															
Plaintes réglées	1	-	-	-	-	-	1	1	-	-	-	-	11	14	64%
Plaintes rejetées/classées	-	**1**	-	-	-	-	-	-	-	**1**	-	-	**2**	**4**	**18%**
Plaintes retirées	-	-	-	-	-	-	-	1	-	-	-	-	3	4	18%
Total partiel	**1**	**1**	-	-	-	-	**1**	**2**	-	**1**	-	-	**16**	**22**	

TABLEAU 5

RÉPARTITION des PLAINTES RÉGLÉES par MOTIF de DISCRIMINATION

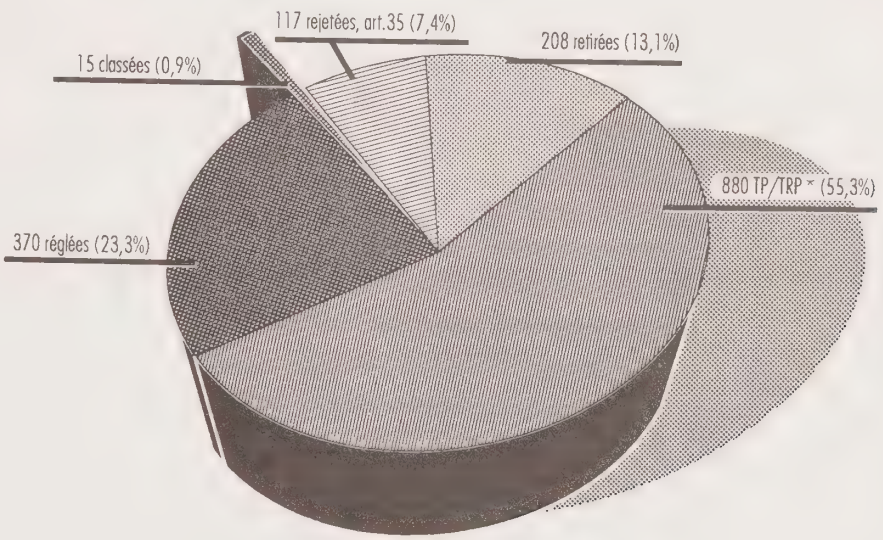
Motif :	Dommages-intérêts	Nombre de plaignants indemnisés	Offre immédiate d'un emploi ou d'une installation	Offre ultérieure d'un emploi ou d'une installation	Programme d'action positive	Collègues pour le personnel de l'intimé	Révision des pratiques, méthodes et documents	Lettre de références ou correction des références	Lettre d'excuses adressée au plaignant	Déclaration écrite de politique de non-discrimination
Race ou couleur	469 205 $	32	44	7	1	12	39	10	27	68
Origine ethnique	**62 981**	**2**	**5**	**3**	**-**	**1**	**4**	**2**	**9**	**10**
Croyance	1 894	2	1	4	-	-	6	2	4	3
Sexe et grossesse	**114 061**	**57**	**45**	**20**	**2**	**3**	**36**	**14**	**19**	**57**
Harcèlement sexuel	198 916	51	11	3	1	13	20	9	22	56
Orientation sexuelle	**250**	**1**	**3**	**-**	**-**	**1**	**5**	**1**	**5**	**10**
Âge	214 005	25	9	6	-	5	23	1	11	27
État matrimonial	**8 582**	**13**	**8**	**1**	**-**	**1**	**10**	**1**	**10**	**8**
État familial	9 058	9	10	5	-	1	7	2	6	14
Handicap	**577 189**	**213**	**168**	**45**	**3**	**18**	**99**	**55**	**38**	**196**
État d'assisté social	-	-	4	3	-	1	2	-	1	2
Existence d'un casier judiciaire	-	-	-	-	-	-	-	-	**1**	
Divers *	48 506	4	4	1	1	1	2	1	4	3
TOTAL	**1 704 647 $**	**409**	**312**	**98**	**8**	**57**	**253**	**98**	**156**	**455**

* Représailles, violation du règlement intervenu, aucun motif.

TABLEAU 4

RÉPARTITION des PLAINTES par TYPE de RÈGLEMENT

TABLEAU 4 - RÉPARTITIONS DES PLAINTES PAR TYPE DE RÈGLEMENT



* Traitement prioritaire/ Tentative de règlement précoce

TABLEAU 3

RÉPARTITION des PLAINTES par TYPE de HANDICAP et DOMAINE

Type de handicap :	Services	Logement	Contrats	Emploi	Associations professionnelles	Total	Pourcentage
Troubles sensoriels (de la vue, de l'ouïe, de la parole, etc.)	13	5	-	21	-	39	4%
Troubles respiratoires (asthme, maladies pulmonaires, etc.)	-	**1**	-	**32**	-	**33**	**4%**
Membres et doigts (amputation, déficience, etc.)	5	3	1	124	-	133	15%
Troubles cardiovasculaires (troubles cardiaques, hypertension, accident vasculaire, etc.)	-	**1**	-	**15**	-	**16**	**2%**
Troubles neuromusculaires (dystrophie, sclérose, paralysie cérébrale, quadriplégie, etc.)	8	3	-	12	-	23	3%
Troubles neurologiques (épilepsie, crises, lésions cérébrales, etc.)	**6**	**1**	-	**24**	-	**31**	**4%**
Affections et troubles d'ordre général (allergies, cancer, diabète, etc.)	19	4	-	363	-	386	44%
Divers (handicaps multiples, obésité, etc.)	**1**	-	-	**67**	**3**	**71**	**8%**
Difficultés d'apprentissage (dyslexie, etc.)	-	1	-	4	-	5	1%
Déficience mentale (ou affaiblissement intellectuel)	**4**	**1**	-	**5**	-	**10**	**1%**
Troubles mentaux (troubles psychiatriques, troubles de la personnalité, toxicomanies, etc.)	1	2	-	69	-	72	8%
Plaintes au titre de la Loi sur les accidents du travail	**2**	-	-	**44**	-	**46**	**5%**
Adaptation raisonnable (art. 16)	12	2	-	1	-	15	2%
Total	**71**	**24**	**1**	**781**	**3**	**880**	
Pourcentage	8%	3%	-	89%	-		

TABLEAU 2

RÉPARTITION des PLAINTES par MOTIF de DISCRIMINATION et DOMAINE

Domaine:	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social (logement seulement)	Existence d'un casier judiciaire (emploi seulement)	Représailles	Violation du règlement intervenu	Aucun motif (art. 33)	Total	Pourcentage
Services	34	16	15	14	-	15	7	12	7	71	-	-	-	1	-	192	10%
Logement	**19**	**8**	**2**	**11**	**6**	**5**	**14**	**17**	**51**	**24**	**26**	*	*	*	*	**183**	**9%**
Contrats	3	-	1	-	-	-	-	1	1	1	-	-	-	-	-	7	-
Emploi	**203**	**52**	**28**	**224**	**124**	**13**	**86**	**35**	**20**	**781**	*	**2**	-	-	-	**1568**	**79%**
Associations professionnelles	3	1	2	4	-	-	1	1	-	3	-	-	-	-	-	15	1% **2%**
Représailles	*	*	*	*	*	*	*	*	*	*	*	*	**30**	*	*	**30**	
Violation de règlement intervenu	—	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	-
Total	**262**	**77**	**48**	**253**	**130**	**33**	**108**	**66**	**79**	**880**	**26**	**2**	**30**	**2**	-	**1996**	
Pourcentage	13%	4%	2%	13%	7%	2%	5%	3%	4%	44%	1%	-	2%	-	-		

Plaintes fondées sur les nouvelles dispositions du Code:

Discrimination indirecte	2	-	-	-	-	-	-	-	-	1	1	-	1	-	-	5	
Discrimination fondée sur																	
l'association	-	-	1	-	1	-	-	-	-	2	-	-	-	-	-	4	
Demandes d'emploi	-	-	-	-	-	-	-	-	1	2	-	-	-	-	-	3	
Assurance	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
Total	**2**	-	**1**	-	**1**	**1**	-	-	**1**	**5**	**1**	-	**1**	-	-	**13**	

TABLEAU 1

RÉPARTITION des PLAINTES par RÉGION et MOTIF de DISCRIMINATION

Région :	Race ou couleur	Origine ethnique	Croyance	Sexe et grossesse	Harcèlement sexuel	Orientation sexuelle	Âge	État matrimonial	État familial	Handicap	État d'assisté social	Existence d'un casier judiciaire	Représailles	Violation du règlement intervenu	Aucun motif	Total	Pourcentage
Est	**20**	**10**	**9**	**34**	**18**	**7**	**14**	**15**	**10**	**138**	**9**	-	**1**	-	-	**285**	**14%**
Hamilton-Niagara	21	6	8	31	16	5	7	8	11	123	-	1	6	-	-	243	12%
Nord	**28**	**6**	**2**	**29**	**9**	**1**	**16**	**8**	**7**	**115**	**7**	-	**2**	**1**	-	**231**	**12%**
Sud-Ouest	45	3	3	34	24	3	17	10	4	87	3	-	1	-	-	234	12%
U.P.H./Systémique	**1**	-	-	-	-	-	-	-	-	**11**	-	-	-	-	-	**12**	**1%**
Toronto-Centre	43	29	13	31	18	9	14	12	14	83	2	1	11	1	-	281	14%
Toronto-Est	**43**	**10**	**5**	**43**	**22**	**4**	**29**	**4**	**17**	**171**	**4**	-	**3**	-	-	**355**	**18%**
Toronto-Ouest	61	13	8	51	23	4	11	9	16	152	1	-	6	-	-	355	18%
Total	**262**	**77**	**48**	**253**	**130**	**33**	**108**	**66**	**79**	**880**	**26**	**2**	**30**	**2**	-	**1996**	
Pourcentage	13%	4%	2%	13%	7%	2%	5%	3%	4%	44%	1%	-	2%	-	-		


NORD
Kenora
Thunder Bay
Timmins
Sault Ste. Marie
Sudbury
TORONTO - EST
EST
Ottawa
TORONTO - CENTRE
TORONTO - OUEST
Kingston
Scarborough
Toronto
Kitchener
Mississauga
London
SUD-OUEST
Hamilton
St. Catharines
HAMILTON - NIAGARA
Windsor
• Bureau de la Commission

BUREAUX DE LA COMMISSION DES DROITS DE LA PERSONNE

BUREAU PRINCIPAL
400, avenue University
Toronto (Ontario)
M7A 2R9
(416) 965-6841
ATS (416) 965-6871

TORONTO-CENTRE
595, rue Bay, 4e étage
Toronto M5G 2C2
(416) 326-9511

TORONTO-EST
2500, avenue Lawrence est
2e étage
Scarborough M1P 2R7
(416) 750-3575

TORONTO-OUEST
2, route Robert Speck
Bureau 310
Mississauga L4Z 1H8
(416) 273-7811

RÉGION DE L'EST

Ottawa
2197, promenade Riverside
Bureau 301
K1H 7X3
(613) 738-2801

Kingston
80, rue Queen
Bureau 202
K7K 6W7
(613) 548-6750

RÉGION DE HAMILTON-NIAGARA

Hamilton
119, rue King ouest
8e étage
L8N 3Z9
(416) 521-7870

St. Catharines
1, rue Saint Paul
Bureau 603
L2R 7L4
(416) 684-7406

RÉGION DU SUD-OUEST

London
205, rue Oxford est
2e étage
N6A 5G6
(519) 438-0076

Kitchener
824, rue King ouest
4e étage
(519) 570-9622

Windsor
500, avenue Ouellette
Bureau 305
N9A 1B3
(519) 256-8278

RÉGION DU NORD

Sudbury
119, rue Larch
6e étage
P3E 5P9
(705) 675-4455

Sault Ste. Marie
390, rue Bay
3e étage
P6A 1X2
(705) 942-8417

Thunder Bay
1825, rue Arthur est
P7E 5N7
(807) 623-9119

Timmins
273, 3e Avenue
Bureau 204
P4N 1E2
(705) 267-6231

Kenora
227, 2e Rue sud
3e étage
P9N 1G1
(807) 468-5568

RÉGION DE HAMILTON-NIAGARA

HAMILTON

Brick, Jackie
Gamble, Colina
McCleary, Ottmar
McKinnon, Michael
Morrison, Glen
Ras, Theresa
Strojin, Alan
Strojin, Anny
Verma, Indira

ST. CATHARINES

Cargill-Sim, Fiona
Hachimi, Abdallah
Jostman, Susan
McIntyre, Suzanne

RÉGION DU NORD

SUDBURY

Lapalme, Gilles
Owsiany, Mary Ann
Serpell, Frances
Welch, Dan
Wong, Mila

SAULT STE. MARIE

Fratesi, Debra
Zack-Caraballo, L.

THUNDER BAY

Buffington, Margaret
Carson, Alice
Fraser-Homonick, K.
Kenny, Lorraine

TIMMINS

St-Onge, Joanne

KENORA

Wabegijig, Sandra

RÉGION DU SUD-OUEST

LONDON

Ackroyd, Linda
Burns, Walter
Frank, Jim
Harrington, Rick
Howard, Mary Ann
Senay, D.
Wisdom-Lumsden, M.

KITCHENER

Barit, Margaret
Barker, Sheridan
Barnes, Dorothy
Blackwood, Calvin
Cobb, Don
Schiller, David
Spaling, Audrey

WINDSOR

Carrick, Anne
Koushik, Aruna
McKinnon, Christopher
Riberdy, Joyce

TORONTO-CENTRE

Barrett, Janet
Breiding, Bronwyn
Collins, Geoffrey
Della-Nebbia, Nancy
Downey, Terry
Doyle, Dee
Goh, Andre
Johnson, Bev
McKenzie, Patrice
Miller, Nina
Moore, Maisie
Obermuller, Diane
Speranzini, Gary
Wells, Stanley
Williams, Ashworth
Yohannes, Girma



Toni Silberman, Susan Forrest et Daphne Dales, trois employées de l'Unité de l'éducation et des communications, étudient un document sur le sida produit récemment.

TORONTO-EST

Caffrey, Colm
Crowe, Sheila
Della Vella, Rick
Fernandes, Helen
Horsford, Jocelyn
Hortian, Rikki
Ioi, Rod
Kerna, Gloria
Lloyd, Eva
Masellis, Vicki
Phillips, Lolita
Riley, Bernice
Seales, Robert
Schnippering, Roland
Thoo, Valerie
Wagg, Anita

TORONTO-OUEST

Chapman, Shirley
Charsley, Anne
Forghani, Angela
Fox, Anita
Gayle, Harold
Giesbrecht, Dennis
Griffith-Silvera, J.
Hajsaniuk, Andrew
Lam, Marian
Marcuz, Vic
McPhee, Nola
Molloy, Peggy
Samuel, Mary
Sibblies, Geanine
Soondarsingh, Vijay

RÉGION DE L'EST

OTTAWA

Bourne, Phyllis
Delph, Esther
Evans, Jennifer
Grant, Donna
Kalimootoo, Roxanne
Legault, Thérèse
Maillet, René
Oliveira, Michael
Richard, Maurice
Ushe-Robb, Thoko
Wijayanayaka, Ruby B.

KINGSTON

Breen, Marion
Cotton, W. Murray
Dain, M.
Polley, Joe

PERSONNEL

DE LA COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

(au 31 mars 1990)

BUREAU PRINCIPAL ET BUREAU DE LA COMMISSAIRE EN CHEF

Britton, Barbara
Cain, Wylie
Frazee, Catherine
Lezbzuk, Oksana
Locke, Sandra
McIlroy, Janet
Seeley, Pat
Warburton, Rachel

BUREAU DU DIRECTEUR GÉNÉRAL

Gaspar, Fern
Jim, Serena
Service, Janice

UNITÉ DE L'OBSERVATION DU CODE

Cooper, Connie
Hurley, Helen
Ramanujam, Sita
Schreiter, Marty

UNITÉ DE L'ÉDUCATION ET DES COMMUNICATIONS

-Dales, Daphne
Forrest, Susan
Jeram, Mani
Justason, Barbara
Kerekes, Laszlo
Shefman, Alan
Silberman, Toni
Wu, Bill

UNITÉ DE RÉEXAMEN

Edwards, Neil
Lee, Rose
Svezda, Laima

ACCÈS À L'INFORMATION ET PROTECTION DE LA VIE PRIVÉE

Palacio, Roger

UNITÉ DES FINANCES ET DE L'ADMINISTRATION

Bhawanie, Stella
Brophey, Brian
Choudhury, Nisha
Ganesh, Albert
King, Carol
Lees, Deborah
McKee, Anne
Parsad, Kaye
Rodriguez, Marion
Tharrenos, Tia
Welker, Kim

UNITÉ DES SERVICES JURIDIQUES

Bickley, Catherine
Davis, Lillian
Frawley, Mark
Ginsburg, Marilyn
Griffin, Tony
Hart, Mark
Joachim, Kaye
Kermany, Mollie
McLoy, Chris
Overend, Naomi C.
Pike, Cathy
Quigley, Chrissy
Rosen, Joanne

UNITÉ DE LA RECHERCHE ET DE L'ÉLABORATION DES POLITIQUES

Armstrong, Jill
Buckingham, Darlene
Drewett, Bruce
Reynolds, Jessica
Wacyk, Tanja

UNITÉ DES ENQUÊTES SUR LA DISCRIMINATION SYSTÉMIQUE

Dahlin, Anita
Fiddes, Judith
Mahoney, Owen
Sequiera, Vera

RESSOURCES HUMAINES

Colombe, Deborah
Douglas, Heather
Jackson, Marilyn
Jeffrey, Elizabeth
Yatco, Jose

RÉVISIONS JUDICIAIRES

Nishimura et al. c. la Commission ontarienne des droits de la personne

Mme Nishimura et 12 autres femmes travaillant au service interne des ventes publicitaires du quotidien The Toronto Star ont déposé une plainte pour cause de discrimination fondée sur le sexe. Elles recevaient un salaire inférieur à celui du personnel des ventes publicitaires itinérant, qui était majoritairement masculin.

En février 1987, la Commission avait décidé de ne pas instruire la plainte puisqu'elle estimait que les plaintes en matière de parité salariale pour fonctions équivalentes ne relevaient pas de sa compétence. Les plaignantes avaient alors demandé une révision judiciaire de cette décision. À l'audience de la demande, en septembre 1989, la Commission a reconnu que sa décision antérieure avait été erronée.

La Cour divisionnaire estimait que la rémunération inégale pour un travail de valeur égale peut constituer une discrimination fondée sur le sexe enfreignant l'article 8 et les paragraphes 4 (1) et 10 (1) du **Code**. Il revient toutefois à la Commission de décider, dans chaque cas, s'il s'agit en fait de discrimination fondée sur le sexe.

La décision du tribunal a fait ressortir qu'en raison du caractère quasi constitutionnel de la loi en matière de droits de la personne, son interprétation doit être large. Le tribunal a par ailleurs souligné que la Commission ne devrait rejeter une plainte qu'elle considère hors de sa compétence que dans les cas indiscutables. C'est en effet à la Commission qu'il revient de décider si le libellé du **Code** s'étend à la discrimination structurelle et aux inégalités salariales. Enfin, la cour a déclaré que malgré l'existence de la **Loi sur les normes d'emploi** et de **la Loi de 1987 sur l'équité salariale**, les plaintes en matière de parité salariale peuvent toujours être déposées en vertu du **Code**.

La Commission ontarienne des droits de la personne c. le Conseil scolaire de Peel

Le 5 mars 1990, la Cour divisionnaire a déclaré que l'éducation publique est un « service » et, par conséquent, qu'elle est soumise à l'article 1 du Code des droits de la personne de l'Ontario. Par ailleurs, le tribunal a souligné que même si la **Loi sur l'éducation** est formulée de manière à permettre des pratiques discriminatoires, le paragraphe 46 (2) du **Code** peut être invoqué afin de prévenir une telle interprétation de la **Loi sur l'éducation**.

La question a été soulevée lors d'une affaire entre la Commission ontarienne des droits de la personne et un conseil scolaire. Par suite de la décision de la Cour divisionnaire, une commission d'enquête a reçu l'autorisation de poursuivre ses audiences.

Grâce à cette décision, la loi ontarienne est désormais comparable à celle des autres provinces, où l'éducation est aussi soumise aux principes établis par la loi en matière de droits de la personne.

En Ontario, le Code des droits de la personne stipule que la discrimination fondée sur la grossesse est une forme de discrimination fondée sur le sexe. Cependant, on y lit également qu'il n'y a aucune violation du **Code** lorsqu'un régime d'assurance collective est conforme à la **Loi sur les normes d'emploi**. Or, la **Loi sur les normes d'emploi** permet un traitement inégalitaire de la part des régimes d'assurance collective si la raison invoquée pour une absence du travail est reliée à la grossesse.



C'est dans une atmosphère de bonne humeur que s'est déroulé le banquet marquant le 10e anniversaire du Conseil national des Canadiens chinois. Sur la photo, on aperçoit Mme Frazee, la commissaire en chef et quelques invités.

COUR SUPRÊME DU CANADA

Janzen et Govereau c. Platy Enterprises Ltd.

Les deux appelantes ont été harcelées sexuellement lorsqu'elles travaillaient comme serveuses dans un restaurant qui appartenait à la partie mise en cause. Le conseil d'arbitrage a décidé qu'on avait violé leurs droits en vertu de la **Loi sur les droits de la personne du Manitoba**, même si celle-ci ne nommait pas le harcèlement sexuel comme motif précis. La Cour d'appel a décidé que le harcèlement sexuel ne constituait pas de la discrimination fondée sur le sexe et que, par conséquent, le conseil avait commis une erreur.

Lors du pourvoi, la Cour suprême du Canada a affirmé qu'il n'est pas nécessaire que toutes les femmes soient victimes de harcèlement pour que le harcèlement sexuel soit classé parmi les formes de discrimination fondée sur le sexe. La Cour suprême a donc décidé que les femmes dans cette affaire étaient défavorisées en raison de leur sexe. Les employés de sexe masculin ne se retrouvaient pas dans la même position, tout simplement parce qu'ils étaient des hommes.

La Cour suprême a également déclaré que l'entreprise mise en cause était responsable des gestes posés par ses employés.

Il se peut que ces deux décisions ne s'appliquent pas en Ontario, car les dispositions législatives qui gouvernent ces deux domaines ne sont pas les mêmes qu'au Manitoba.

Cour d'appel de l'Ontario

Le Conseil des écoles séparées catholiques de Lanark, Leeds et Grenville c. la Commission ontarienne des droits de la personne

Les parents de trois enfants déficients moyens avaient déposé une plainte à l'effet qu'on avait refusé à leurs enfants le droit à une éducation catholique. D'abord accueillie par la commission d'enquête, la plainte fut ensuite rejetée par la Cour divisionnaire. La Commission interjeta appel.

La Cour d'appel a rejeté l'appel, car il était sans intérêt pratique. En effet, la situation réelle des enfants ayant évolué depuis l'époque où les parents avaient déposé la plainte, il aurait été peu approprié de rétablir la décision de la commission d'enquête. Du reste, comme les dispositions du **Code** faisant l'objet du litige avaient déjà été modifiées, il ne restait aucune question de principe à régler.

Cour d'appel de l'Ontario

West End Construction Limited et David Scott c. la Commission ontarienne des droits de la personne, Bahjat Tabar, Chong Man Lee et Kyung S. Lee

Cet appel, interjeté par la Commission ontarienne des droits de la personne, découlait d'une décision rendue par une Cour divisionnaire selon laquelle le délai de prescription de deux ans prévu par la **Loi sur la prescription des actions** s'appliquait aux plaintes déposées en vertu du **Code**. La Cour d'appel a décidé que les délais stipulés par la **Loi sur la prescription des actions** ne s'appliquent pas à ces plaintes. La Cour a fait valoir que les plaintes en matière de droits de la personne se distinguent des instances traditionnelles par le fait que la partie plaignante n'exerce guère d'influence sur la poursuite une fois sa plainte déposée. D'ailleurs, la discrimination est souvent une pratique permanente plutôt qu'un incident ponctuel. Par conséquent, une plainte déposée en vertu du **Code** ne constitue pas une cause d'action telle que la définirait habituellement la **Loi sur la prescription des actions**. Ainsi, le seul délai de prescription pouvant s'appliquer aux plaintes en matière de droits de la personne est discrétionnaire et se retrouve à l'alinéa 33 (10) d) du **Code**.

COUR SUPRÊME DU CANADA

Brooks c. Canada Safeway Ltd.

L'appelante, qui travaillait comme caissière chez Canada Safeway, est tombée malade durant sa grossesse et était incapable de travailler. Elle n'avait pas droit aux prestations prévues par le régime d'assurance collective de l'entreprise pour la seule raison qu'il restait moins de dix semaines avant la date prévue de son accouchement et que, par conséquent, elle avait droit aux prestations de maternité de l'assurance-chômage. En 1983, elle déposa une plainte auprès de la Commission manitobaine des droits de la personne alléguant qu'elle avait été victime de discrimination fondée sur le sexe.

La Cour suprême du Canada a décidé que le traitement inégalitaire fondé sur la grossesse constituait effectivement une forme de discrimination fondée sur le sexe, renversant ainsi la décision qu'elle avait rendue dans l'affaire Bliss. La Cour suprême a par ailleurs énoncé qu'elle croyait en « l'importance fondamentale » de la grossesse pour la société.

Sinclair c. la Peel Non-Profit Housing Corporation

La plaignante, une mère célibataire bénéficiaire de prestations familiales, avait fait une demande en vue d'obtenir un appartement à « loyer adapté au prix du marché » (LAPM) dans un édifice exploité par le propriétaire, la Peel Non-Profit Housing Corporation (PNPHC). Or, pour être susceptible d'obtenir un tel logement à la PNPHC, il fallait satisfaire à un critère minimal en matière de revenu et, comme Mme Sinclair ne répondait pas à ce critère, sa demande fut rejetée. Elle déposa alors une plainte auprès de la Commission, alléguant qu'elle était victime de discrimination fondée sur le sexe et sur son état d'assistée sociale.

Après la nomination d'une commission d'enquête, la Commission, la plaignante et la PNPHC sont arrivées à une entente. Par suite du règlement, la PNPHC a apporté les modifications suivantes à ses conditions d'admission afin de faciliter l'accès des femmes et des personnes bénéficiant de l'aide sociale à ses logements à LAPM :

- toute personne qui démontre qu'elle est en mesure de payer le loyer d'un logement à LAPM est susceptible d'obtenir un tel logement;
- la PNPHC décidera de bonne foi si l'auteur de la demande est en mesure de payer le loyer d'un appartement à LAPM;
- même si le ou la locataire doit consacrer jusqu'à 65 p. 100 de son revenu au LAPM, il ou elle est désormais quand même susceptible de l'obtenir;
- la personne qui fait une demande peut démontrer qu'elle est en mesure de payer le loyer par divers moyens, notamment en nommant une personne qui se portera garante.

APPELS

Cour d'appel de l'Ontario

L'association Airport Taxicab (Malton) et autres c. Lucy Piazza et la Commission ontarienne des droits de la personne

Cet appel traitait du pouvoir qu'a une commission d'enquête d'ordonner le versement d'une indemnisation au plaignant. Dans cette affaire, la commission d'enquête avait adjugé une indemnisation à la plaignante pour toute la période durant laquelle elle avait été sans travail par suite de la discrimination dont elle avait été victime. La Cour divisionnaire a ramené ce montant à celui de la période correspondant au délai raisonnable que prévoit la common law en cas de renvoi injustifié.

La Cour d'appel de l'Ontario a rétabli la décision de la commission d'enquête, en précisant que l'objet d'une ordonnance d'indemnisation à la victime, en vertu du **Code**, est de placer cette personne dans une situation qui ressemble le plus possible à celle qu'elle aurait connue si aucun geste discriminatoire n'avait été posé à son endroit. La Cour a décidé qu'il ne convenait pas d'appliquer à la jurisprudence en matière de droits de la personne la limite sur l'indemnisation que stipule la common law pour les plaintes en raison de renvoi injustifié.

Engell c. l'hôpital Mount Sinai et Lanigan-Gilmour

L'hôpital a licencié Mme Engell après que celle-ci eût décidé de prendre ses vacances comme prévu malgré que son employeur l'eût avisée qu'elle ne pourrait le faire en raison de ses longues absences antérieures.

En effet, la plaignante s'était absentée de son travail au cours de l'année précédente pour deux motifs : elle est atteinte de sclérose en plaques et elle avait souffert de vomissements de la grossesse.

La commission d'enquête a décidé que l'hôpital avait fondé sa décision, en partie, sur la sclérose en plaques dont souffrait la plaignante et sur les vomissements qu'elle avait eus durant sa grossesse.

En raison de cette violation du **Code**, la commission a ordonné aux parties mises en cause de verser à Mme Engell 7 200 $ pour perte de revenu et 1 000 $ pour angoisse, ainsi que les intérêts courus sur ces deux montants. En outre, la commission leur a ordonné de rectifier le dossier personnel de Mme Engell et de lui remettre une lettre de recommandation.

Ouimette c. Lily Cups Ltd.

Mme Ouimette était en période d'essai à la société Lily Cups Ltd. L'entreprise avait une règle non écrite selon laquelle tout employé à l'essai qui s'absentait durant trois jours serait automatiquement congédié. Or, la plaignante s'est absentée durant une journée en raison d'une présumée réaction allergique à l'aspirine, puis durant deux jours car elle souffrait de la grippe. La plaignante a donc été congédiée en raison de ces absences. Elle allégua qu'il s'agissait de discrimination fondée sur un handicap.

La commission d'enquête a décidé que la Commission n'avait pas réussi à prouver que la plaignante avait été victime d'une réaction allergique. Par ailleurs, tout en précisant qu'elle ne fondait pas sa décision sur ce point, la commission a fait remarquer qu'absorber un médicament sans se renseigner au préalable sur sa composition constituait une négligence grave et que la plaignante ne pouvait en invoquer les conséquences comme motif de discrimination à son égard.

En outre, la commission d'enquête a décidé qu'une maladie aussi banale et passagère que la grippe ne pouvait être considérée comme un handicap en vertu du **Code**. Elle a déclaré que qualifier la grippe de handicap violerait les objectifs nobles de la protection qu'offre le **Code** aux personnes handicapées. La commission d'enquête a ordonné à la Commission de dédommager la partie mise en cause de ses frais juridiques.

EN MATIÈRE DE DROITS DE LA PERSONNE - EXEMPLES

La Commission ontarienne des droits de la personne reçoit un plus grand nombre de plaintes que toute autre commission provinciale ou fédérale. Dans la forte majorité des cas, elles aboutissent à un règlement entre la partie plaignante et la partie mise en cause, règlement qui est soumis à l'approbation de la Commission. La Commission cherche à employer son pouvoir d'approbation des règlements de façon à faire valoir les questions d'intérêt public soulevées par chacune des plaintes. Certaines plaintes sont retirées. D'autres, en revanche, sont rejetées par la Commission lorsqu'il n'est pas indiqué de constituer une commission d'enquête ou que la preuve présentée ne le justifie pas. Bien qu'un pourcentage relativement faible des plaintes donne lieu à une commission d'enquête, la portée jurisprudentielle des décisions que rendent ces commissions est considérable. Une décision prise par une commission d'enquête dans laquelle le **Code** reçoit une interprétation large peut inciter fortement le public à réorienter ses attitudes et ses pratiques.

Voici un aperçu de cas ayant récemment abouti à des règlements importants, ainsi que des décisions de commissions d'enquête ontariennes, de tribunaux et de compétences autres qu'ontariennes en matière de droits de la personne.

COMMISSIONS D'ENQUÊTE

Chamberlin c. Stirling Honda

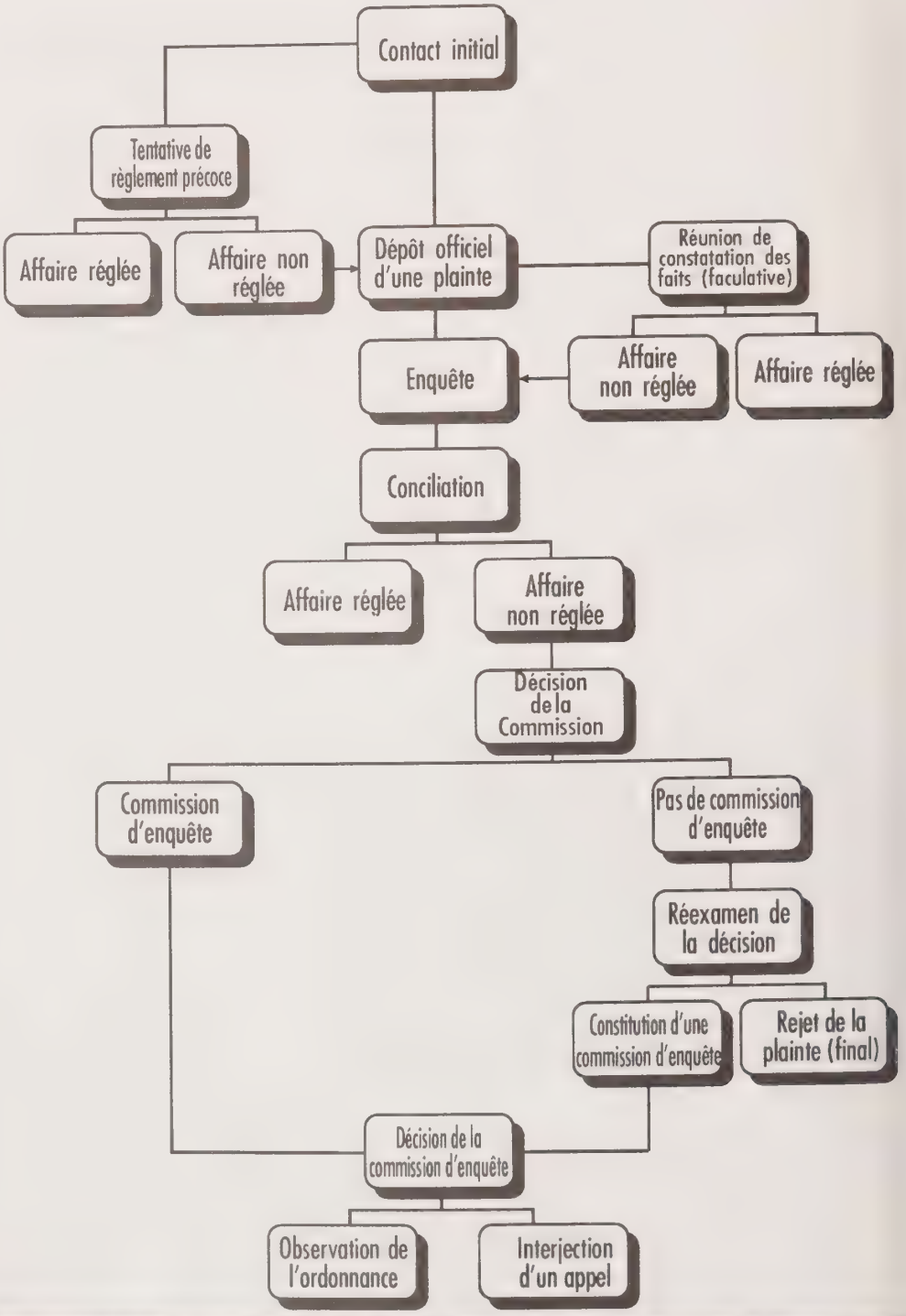
M. Chamberlin a été congédié par la société Stirling Honda après avoir pris deux semaines de congé sur l'avis de son médecin. Le médecin avait envoyé une lettre expliquant que son patient souffrait de « fatigue émotive grave » et qu'il devrait se reposer durant quelques semaines.

La partie mise en cause a soutenu que M. Chamberlin avait été renvoyé pour cause de mauvais rendement.

La commission d'enquête a décidé que l'état de M. Chamberlin, un trouble de l'adaptation avec dépression, est un trouble mental selon le Code des droits de la personne de l'Ontario. La commission a souligné que le **Code** ne renferme pas une liste exhaustive des troubles mentaux que l'on peut considérer comme un handicap. Par ailleurs, la commission a fait remarquer que le **Code** ne restreint pas la définition de handicap aux troubles mentaux graves.

La commission d'enquête n'a pu établir avec certitude si la tension dont souffrait le plaignant découlait de son emploi. Par conséquent, elle a fixé à 2 500 $ l'indemnité à verser à M. Chamberlin.

TRAITEMENT DES PLAINTES



Le personnel de l'Unité s'est aussi attaché à rationaliser son travail. C'est à cette fin qu'a été produit un manuel de procédures et un plan opérationnel pour l'élaboration de stratégies visant le traitement plus efficace des dossiers.

Grâce au manuel de procédures, la Commission pourra uniformiser son mode de fonctionnement à l'échelle de la province. Le manuel sera également mis à la disposition du public afin de faire connaître le mode de traitement des plaintes qui sont adressées à la Commission.



Lors d'un forum, à Kingston, des représentants de la Commission ont présenté les Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées.

Certaines des initiatives entreprises par l'Unité visaient à acquérir la technologie informatique nécessaire pour, d'une part, améliorer la communication entre les bureaux régionaux installés aux quatre coins de la province et, d'autre part, surveiller l'évolution des dossiers. Par ailleurs, nous avons entrepris un remaniement majeur des effectifs de l'Unité par l'embauche de personnel supplémentaire et la rationalisation des descriptions de tâches et des responsabilités afin qu'elles reflètent mieux la complexité du travail que nous accomplissons. Les étapes préliminaires ont donc consisté, notamment, en l'embauche d'adjoints et d'adjointes en matière de droits de la personne ainsi que de personnel supplémentaire dans tous les bureaux régionaux. On a aussi créé le poste de coordonnateur régional des dossiers pour veiller à la mise en oeuvre d'un programme de gestion des dossiers d'envergure provinciale, destiné à réduire l'accumulation de dossiers.

Entre le 1er avril 1989 et le 31 mars 1990, la Commission a reçu 61 901 demandes de renseignements et a obtenu des dommages-intérêts totalisant 1 704 647 $ au nom de 409 plaignants et plaignantes. Au cours de cette période, la Commission a reçu 1 996 plaintes officielles. Elle a fermé 1 590 dossiers : 1 250 ont été réglés et 117 rejetés. La Commission a décidé de ne pas traiter 15 dossiers en vertu de l'article 33. Enfin, 208 plaintes ont été retirées par la partie plaignante.

UNITÉ DE L'OBSERVATION DU CODE

L'effectif de cette unité est le plus important de toute la Commission. En effet, ses membres se retrouvent non seulement au bureau principal, mais encore dans chacun des 15 bureaux de district de la Commission, situés dans sept régions de la province, soit : le Nord (Sudbury, Sault Ste. Marie, Thunder Bay, Timmins et Kenora), l'Est (Ottawa et Kingston), le Sud-Ouest (London, Kitchener et Windsor), Hamilton-Niagara (Hamilton et St. Catharines), Toronto-Ouest (Mississauga), Toronto-Est (Scarborough) et Toronto-Centre. Chacun de ces bureaux régionaux est sous la direction d'un chef de service et son personnel se compose de spécialistes des droits de la personne.

En règle générale, l'Unité sert de premier contact entre le public et la Commission. En effet, l'une des principales activités de son personnel consiste à recevoir le nombre considérable de plaintes déposées chaque année auprès de la Commission, de mener les enquêtes et d'effectuer la conciliation.

Promouvoir le principe énoncé dans le préambule du **Code** constitue l'une des principales tâches de l'Unité. Aussi son personnel offre-t-il divers services à un grand nombre de personnes et de groupes. Entre autres, il explique le **Code** à des personnes oeuvrant dans les secteurs public et privé et organise des séminaires à l'intention d'élèves et du grand public dans un but de sensibilisation aux questions touchant les droits de la personne.

L'Unité a récemment présenté le document intitulé **Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées**, résultat d'une initiative importante dans le domaine de l'éducation du public. En effet, de concert avec l'Unité de l'éducation et des communications, le personnel de l'Unité et les membres de la Commission ont organisé et tenu des forums dans diverses régions de la province pour informer les Ontariennes et les Ontariens et le monde des affaires des nouvelles **Directives** et leur en faire comprendre les répercussions sur les secteurs de l'emploi, du logement et des services.

UNITÉ

DES SERVICES JURIDIQUES

Directeur : Mark Frawley

L'Unité des services juridiques aide la Commission à s'acquitter de son mandat, qui comprend l'observation du **Code**, l'éducation du public et ses litiges.

Les membres de l'Unité contribuent aux processus d'enquête et de conciliation en donnant des conseils juridiques aux agents et aux chefs de service des bureaux régionaux. Ils consacrent une grande partie de leur temps à la formulation d'opinions juridiques au sujet des plaintes sur lesquelles la Commission est amenée à statuer et sur d'autres questions de fond ou de forme reliées aux activités de la Commission. Ils participent aux réunions de la Commission, où ils donnent au besoin leur avis juridique sur les décisions prises par celle-ci.

Les membres de l'Unité font oeuvre de conseillers juridiques de la Commission devant les tribunaux et les commissions d'enquête dans les instances de révision judiciaire et d'appel.

Le travail de l'Unité consiste également à répondre aux demandes de renseignements provenant du public. Ses membres participent aussi à des ateliers, des séminaires et des congrès.

sion, le 15 juin, et les réunions publiques de la Commission
- coordonner la production du Rapport annuel
- assurer la liaison avec les réseaux externes en matière de relations interraciales
- maintenir les relations avec les médias, notamment par la production de communiqués et l'organisation de conférences de presse
- répondre aux demandes de renseignements provenant des médias.

Dans le domaine de l'éducation, l'une des principales initiatives de l'Unité a été l'organisation et la mise en oeuvre de séminaires dans cinq régions de la province pour diffuser les **Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées**. Cette nouvelle politique, qui découle d'une modification apportée au **Code** en 1986, a donné lieu au plus important programme d'éducation du public jamais entrepris par la Commission. Ainsi, de concert avec le Advocacy Research Centre for the Handicapped, l'Unité a conçu des programmes à l'intention des représentants du monde des affaires, du gouvernement et du grand public pour leur permettre de mieux saisir l'étendue de l'interprétation donnée au concept de handicap dans le **Code**. Ce programme de séminaires se poursuivra durant l'exercice fiscal en cours.

L'élaboration d'une stratégie visant la pleine accessibilité des Directives a été effectuée à la même époque. En effet, cette publication est la première que la Commission ait produite en français et en anglais (et en d'autres langues sur demande... les versions italienne et portugaise sont maintenant prêtes), sur cassette magnétoscopique (dans les deux langues) et sur disque informatique. Toutes les publications de la Commission sont désormais offertes sur divers supports.

Au cours de l'année passée, l'Unité a axé ses activités sur les nouvelles politiques ou les politiques modifiées qui expliquent l'interprétation que fait la Commission du **Code**. Ainsi, on nous a commandé plus de 320 000 publications (dépliants, directives et politiques). Bien que plusieurs de ces publications ne nous aient été livrées que vers la fin de l'exercice dernier ou au début du présent, nous en avons tout de même distribué plus de 130 000.

La Commission a amorcé l'élaboration d'un programme de formation complet à l'intention de son personnel. Les mérites de cette initiative ont été reconnus par d'autres provinces notamment par l'élection de la coordonnatrice à l'éducation de l'Unité, Barbara Justason, au poste de présidente du sous-comité de formation de l'Association canadienne des commissions et conseils des droits de la personne. Nous poursuivons également l'élaboration de séances de formation à l'intention du personnel sur la politique en matière d'insinuations, de harcèlement et de plaisanteries d'ordre racial et sur le manuel de procédures. L'élaboration de ce programme de formation sera sans doute achevée vers l'automne 1990.

Le travail quotidien de l'Unité consiste, d'une part, à répondre à la vaste gamme de demandes de renseignements sur des questions précises ou d'ordre général provenant des médias et du grand public. Par ailleurs, la Commission a adopté une démarche proactive visant à faire connaître ses activités au public. L'on estime que la population acquerra une meilleure compréhension de ses droits si les affaires intéressantes et instructives ayant été réglées ou ayant fait l'objet de la décision d'une commission d'enquête sont rendues publiques.

En décembre 1989, l'Unité a coordonné un programme important de sensibilisation et d'éducation du public, en collaboration avec les organisateurs de la Journée internationale des droits de la personne. La Commission a ainsi distribué plus de 7 000 trousses d'informations aux écoles, gouvernements municipaux, collèges et universités et aux députés provinciaux. La trousse contenait un exemplaire du Rapport annuel ainsi qu'une proclamation de la Journée internationale des droits de la personne, rédigée par la Commission. Tous les participants ont d'ailleurs été conviés par la Commission à reconnaître officiellement la Journée et la Semaine internationale des droits de la personne.

UNITÉ DE L'ÉDUCATION ET DES COMMUNICATIONS

Directeur : Alan Shefman

Au cours de sa première année complète de fonctionnement, l'Unité de l'éducation et des communications a connu un essor considérable dans tous ses secteurs d'activité.

Cette unité a deux objectifs principaux. D'abord, transmettre à la population ontarienne, à la fois par l'intermédiaire des médias et au moyen de contacts directs, les politiques et les pratiques de la Commission de même que les droits et les obligations énoncés dans le **Code**. Ensuite, l'Unité offre des séances de formation aux membres du personnel de la Commission afin qu'ils soient mieux en mesure d'offrir des services professionnels et efficaces aux Ontariennes et aux Ontariens.

Ce n'est qu'en éduquant la population sur ses droits que l'on arrivera enfin à éliminer la discrimination. Ainsi, nous devons informer les organismes privés et publics de leurs obligations, de manière à ce qu'ils puissent se conformer aux exigences du **Code**. Quant aux membres du public, nous devons leur donner l'occasion de comprendre non seulement ce qui risque d'enfreindre leurs droits, mais aussi les mesures qu'ils peuvent prendre dans de tels cas.

C'est donc en vue d'atteindre ces objectifs que l'Unité est chargée des responsabilités suivantes :

- élaborer des programmes d'éducation
- créer du matériel éducatif, qu'il s'agisse de documents vidéo ou écrits
- publier et diffuser une vaste gamme de documents tels que des dépliants, des directives, des politiques et des feuillets d'information
- veiller à ce que toutes les publications de la Commission soient accessibles au public
- préparer toutes les publications
- diffuser les décisions rendues par les commissions d'enquête
- publier un bulletin d'information interne
- traduire les documents
- coordonner le perfectionnement professionnel et la formation du personnel en matière de politiques
- assurer l'orientation des nouveaux membres du personnel
- coordonner les invitations à prononcer des discours reçues par la commissaire en chef et les commissaires
- préparer des discours
- participer au Comité de sensibilisation de la Commission
- élaborer des programmes de formation sur le **Code des droits de la personne** à l'intention des fonctionnaires ontariens
- préparer des projets spéciaux comme la Journée internationale des droits de la personne, en décembre, l'anniversaire de la Commis-

Outre ses capacités en matière de mise en application du **Code**, l'Unité restera fidèle à son rôle de conseiller sur les questions d'égalité, tant pour les membres de la Commission que pour le grand public. Pour ce faire, elle embauchera du personnel supplémentaire au cours de l'année qui vient. Le rôle de ces conseillers sera de recommander la mise en oeuvre des programmes spéciaux comportant des buts et un échéancier; d'analyser et de revoir les systèmes; de conseiller ses clients; et, enfin, d'aider leurs collègues en poste dans les régions en soutenant le travail accompli en matière d'équité. Au cours du prochain exercice, l'Unité compte accroître ses capacités en analyse des données et en méthodologie statistique comme complément à l'ensemble des services consultatifs qu'elle offre déjà. Afin de se doter de services de consultation et de mise en application qui tirent parti des données et des ressources existantes, l'Unité tiendra compte de l'expérience d'organismes officiels de réglementation déjà existants, tels la Commission canadienne des droits de la personne, le Programme de contrats fédéraux et la U.S. Equal Employment Opportunity Commission.

Comme il est également du ressort de l'Unité de promouvoir l'observation spontanée du **Code**, elle s'est attachée, l'an dernier, à élaborer des lignes directrices sur les programmes spéciaux (art. 13 du **Code**), afin d'aider les employeurs, les locateurs ou les prestataires de services qui veulent implanter de tels programmes « destiné[s] à alléger un préjudice ou un désavantage économique ou à aider des personnes ou des groupes défavorisés à jouir ou à essayer de jouir de chances égales ». Les programmes d'équité d'emploi font partie des programmes spéciaux.

La Commission se fondera sur ces lignes directrices pour recommander la mise en oeuvre de programmes spéciaux ou évaluer ceux déjà en place, y compris ceux instaurés par suite d'une ordonnance. Ces lignes directrices seront publiées et mises à la disposition du public au début de l'exercice financier 1990-1991.

Par ailleurs, l'Unité a activement participé à l'éducation du public sur la position de la Commission relativement à la discrimination systémique. Ainsi, des membres du personnel de l'Unité ont rencontré, à plusieurs reprises, des employeurs, des employés et des groupes de consommateurs, tant du secteur privé que public, dont la Toronto Employment Equity Practitioners Association, la Personnel Association of Ontario, l'Association canadienne des professionnels en réadaptation, le Persons United for Self-Help, les groupes municipaux créés par la CAT et le Secrétariat aux ressources humaines.

L'Unité espère compléter ses effectifs au cours de la prochaine année afin de mener à bien les diverses initiatives en matière d'équité systémique qu'elle a déjà mises en oeuvre.



Mme Frazee, invitée à l'émission télévisée « Disability Network », diffusée au réseau anglais de Radio-Canada.

UNITÉ DES ENQUÊTES SUR LA DISCRIMINATION SYSTÉMIQUE

Directrice : Anita Dahlin

En 1989, la Commission mettait sur pied l'Unité des enquêtes sur la discrimination systémique afin de renforcer ses capacités à traiter plus efficacement les questions complexes et nouvelles en matière de discrimination systémique. La nouvelle unité permet aussi à la Commission de formuler des stratégies pour dépister et éliminer les barrières systémiques.

Deux secteurs importants retiennent l'attention du personnel de l'Unité : l'élaboration de stratégies pour la mise en application du **Code** et la prestation de services de consultation.

Les stratégies de mise en application du **Code** visent à éliminer les barrières systémiques par le dépistage de groupes désignés qui sont sous-représentés et la mise en oeuvre de mesures pour remédier à cette situation. Ainsi, le personnel de l'Unité enquêtera sur des plaintes pertinentes logées par la Commission elle-même, surtout lorsque la portée des règlements risque d'avoir une grande influence sur la population. On pourra aussi trouver de telles plaintes par l'intermédiaire du programme d'observation du **Code** de la Commission.

L'Unité des enquêtes sur la discrimination systémique est composée d'équipes d'agents de mise en application du **Code**, qui collaborent fréquemment avec les agents régionaux. Ces équipes enquêtent et tentent de régler les plaintes pour discrimination systémique. On s'attend à ce que ces enquêtes entraînent des règlements type (ou, sinon, le recours à une commission d'enquête) qui pourraient comprendre, par exemple, la mise en oeuvre de services ou de programmes d'équité d'emploi.

Par ailleurs, l'Unité a mis en oeuvre la stratégie de mise en application élaborée par la Commission pour contrer la discrimination systémique à l'égard des personnes handicapées. Ainsi, on traite en priorité les affaires qui mettent de l'avant les buts énoncés dans les **Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées**. Pour que ses efforts de mise en application soient le plus efficace possible, la Commission a consulté divers groupes représentant les personnes handicapées, notamment le Advocacy Resource Centre for the Handicapped, l'Office des personnes handicapées et la Coalition of Disabled Persons for Employment Equity.

Council of Sikhs, étudie et cherche à résoudre un certain nombre de questions qui préoccupent la collectivité sikh. L'une des questions présentement à l'étude est celle du port obligatoire du turban et du kirpan : le **Code de la route** exige que les motocyclistes portent un casque et il est interdit aux Sikhs de porter leur kirpan dans une salle d'audience ou dans des écoles.

L'échange d'information avec d'autres organismes défenseurs des droits de la personne, tant à l'échelle nationale qu'internationale, est un aspect important des activités de l'Unité qui permet de promouvoir l'élaboration de stratégies conjointes pour éliminer la discrimination. Au cours de l'année, le personnel de l'Unité a ainsi participé à plusieurs conférences et forums éducatifs et la directrice, Tanja Wacyk, a été élue vice-présidente de l'International Association of Organized Human Rights Agencies.

En juin 1989, à l'occasion de la conférence internationale sur le sida qui se déroulait à Montréal, la directrice de l'Unité a rendu public un **énoncé de politique sur la discrimination fondée sur le sida**. Le document présente l'interprétation que fait la Commission des dispositions du **Code** qui protègent les personnes souffrant du sida contre la discrimination.

L'Unité prépare actuellement les nouvelles politiques et directives suivantes :

- Un énoncé de politique sur les insinuations, le harcèlement et les plaisanteries d'ordre racial.
- Des directives en matière de harcèlement sexuel qui énuméreront les types de comportement pouvant constituer de la discrimination.
- Les exigences permettant de tenir compte des différences d'ordre religieux entre employés.

Au début de l'année, la Commission a présenté un mémoire au Comité permanent de l'administration de la justice dans lequel elle proposait un certain nombre de mesures destinées à améliorer les relations entre les forces de l'ordre et les groupes minoritaires. Ce mémoire était fondé sur la connaissance qu'a la Commission des plaintes portant sur la discrimination ou le harcèlement par les forces de l'ordre, à la fois en tant que prestataires de services et en tant qu'employeurs. Le mémoire énonce la position suivante : les divers groupes qui composent la société ontarienne doivent avoir la possibilité de surveiller les activités de la police au moyen de mécanismes tels que des comités d'examen formés de citoyens. Par ailleurs, un projet de loi intitulé **Loi sur les services policiers**, déposé à l'Assemblée législative en décembre dernier, instaurera à l'échelle provinciale un système pour le règlement de plaintes relatives à la conduite des policiers et créera un programme d'équité en matière d'emploi.

La révision **de la Loi sur les normes d'emploi** par le ministère du Travail a également donné lieu à d'importantes activités au sein de l'Unité. En effet, son personnel a préparé deux mémoires à l'intention du Ministère, l'un traitant de tous les aspects de **la Loi** qui tombent sous le coup du **Code**, l'absence en raison de maladie par exemple, et l'autre sur les congés pour raisons familiales, tels que les congés pour s'occuper d'un enfant et les congés de grossesse.

L'Unité a aussi étudié le projet de loi intitulé **Disabled Persons' Minimum Wage Act**, qui s'appliquera aux personnes handicapées employées dans des ateliers protégés et participant à des programmes d'emploi subventionnés.

UNITÉ DE LA RECHERCHE ET DE L'ÉLABORATION DES POLITIQUES

Directrice : Tanja Wacyk

Cette unité est chargée d'élaborer des politiques et des directives pour l'interprétation et l'application des dispositions du **Code**. Le personnel de la Commission s'appuie sur ces directives pour mener des enquêtes sur des plaintes, tandis que le public les consulte afin de connaître ses droits et responsabilités en vertu du **Code**.

L'Unité assure des services de soutien à la Commission tout entière et, notamment, aux responsables des enquêtes sur la discrimination systémique et de l'observation du **Code**. Son mandat étant de surveiller l'évolution des problèmes fort complexes en matière de droits de la personne en Ontario et de chercher à les résoudre, le personnel de l'Unité fait partie de divers comités et organismes. En outre, le personnel consulte fréquemment les groupes concernés, qu'il s'agisse d'organismes communautaires ou de défense des droits, ou du monde des affaires, de l'industrie, des syndicats ou des prestataires de services sociaux ou de santé. Le principal objectif de la consultation est de faire en sorte que la Commission connaisse et prenne en considération les opinions de la collectivité sur ses orientations politiques.

L'une des principales tâches de l'Unité touche l'application du paragraphe 28 (e) du **Code**, qui stipule que la Commission doit examiner et revoir toute loi ontarienne ou tout règlement et tout programme ou ligne de conduite adoptée par une loi ou en application de celle-ci et faire des recommandations sur une disposition, un programme ou une ligne de conduite qui, à son avis, est incompatible avec l'intention du **Code**. Par exemple, l'Unité participe à un comité du ministère de l'Éducation qui étudie du matériel destiné à servir pour des cours sur les droits de la personne. Le personnel de l'Unité est également présent au sein d'un comité consultatif chargé d'élaborer un document, à l'intention des conseils scolaires publics, traitant des prières récitées au début et à la fin de la journée scolaire. Le ministère de l'Éducation a d'ailleurs invité l'Unité à participer à diverses initiatives, dont la façon de traiter les questions délicates d'ordre racial et religieux dans la littérature.

Comme l'élaboration des politiques consiste largement à veiller à ce que l'application du **Code** tienne compte des problèmes de l'heure dans la collectivité et des tendances qu'on y observe, l'Unité collabore étroitement avec plusieurs groupes et organismes communautaires. Ainsi, le personnel de l'Unité, de concert avec des membres du Ontario

UNITÉ DES FINANCES ET DE L'ADMINISTRATION

Directeur intérimaire : Albert Ganesh

L'Unité des finances et de l'administration est chargée de fournir des services de soutien administratif aux autres unités de la Commission dans les domaines suivants : planification et gestion financières, comptabilité, ressources humaines, informatique et administration. Pour ce faire, l'Unité doit élaborer et mettre en oeuvre des mécanismes, des systèmes, des politiques et des méthodes de gestion. Le personnel de l'Unité assure également un soutien spécialisé à la Commission pour la mise en oeuvre de la **Loi sur l'accès à l'information et la protection de la vie privée** (1987).

Au cours de l'année, l'Unité a prêté son concours aux initiatives suivantes :

- améliorer la planification financière et l'élaboration des budgets et amorcer la décentralisation du budget de la Commission, pour en déléguer la responsabilité aux bureaux régionaux;
- effectuer une étude et mettre sur pied deux projets pilotes en bureautique, l'un sur le courrier électronique et l'autre sur le traitement de texte, pour ensuite procéder à l'achat des systèmes informatiques nécessaires et en doter tous les bureaux de la Commission;
- accélérer les activités de recrutement visant l'élaboration de descriptions de postes et achever la dotation en personnel pour les nouveaux postes, notamment pour l'Unité de l'observation du **Code**;
- élaborer une politique en matière d'équité d'emploi et un programme d'orientation à l'intention des nouveaux employés de la Commission;
- trouver de meilleurs locaux pour le bureau principal ainsi que plusieurs bureaux régionaux qui étaient gravement surpeuplés.

L'Unité poursuit son travail d'élaboration et de mise en oeuvre des activités axées sur la promotion de politiques et de pratiques administratives solides et progressistes au sein de la Commission.

David Philpott

Nommé en mars 1989, M. Philpott offre à la Commission une vaste expérience professionnelle acquise principalement dans le secteur privé. Diplômé de l'école d'architecture de l'Université de Toronto, M. Philpott a travaillé dans les domaines du bâtiment, de la gestion financière, des placements et de l'immobilier commercial, de même que comme expert-conseil. À l'heure actuelle, M. Philpott gère sa propre entreprise et siège au conseil d'administration d'autres organismes, dont la Compagnie d'opéra canadienne. M. Philpott est l'auteur d'un succès de librairie intitulé Dangerous Waters.

Jodey Porter

Mme Porter vient d'être nommée coordonnatrice provinciale des services aux diabétiques par le ministère ontarien de la Santé. Elle travaillait depuis huit ans au sein de l'Association canadienne du diabète (ACD) à titre de directrice générale du Ontario Council on Diabetes et de première directrice générale de la section ontarienne de l'ACD. Fervente partisane de la défense des droits des consommateurs, Mme Porter travaille bénévolement pour une cinquantaine d'organismes oeuvrant à promouvoir et à renforcer les droits de la personne. Nommée à la Commission en avril 1989, elle préside actuellement le Comité de sensibilisation. Mme Porter oeuvre aussi au niveau local à titre de membre du conseil d'administration et du comité de planification stratégique du théâtre Grand, à London (Ontario), sa ville natale. Elle fait aussi partie du comité de direction et du conseil d'administration du Centre canadien de philanthropie et préside le comité de formation et de perfectionnement de cet organisme.

Pam K. Gill

Nommée à la Commission en mai 1989, Mme Gill possède une vaste expérience du travail social acquise au programme de subventions du gouvernement fédéral appelé Nouveaux Horizons et en tant que directrice générale de la Richmond Multicultural Concerns Society. Elle a également occupé le poste de chef des services de counselling à la South Asian Social Organization. Quadrilingue, Mme Gill est diplômée de l'Université de la Colombie-Britannique en travail social et en sciences.



Robert G. Paris



David Philpott



Jodey Porter



Pam K. Gill

Elizabeth Kishkon

Résidente de Windsor, Mme Kishkon a été nommée commissaire en mars 1986. Elle a commencé sa carrière comme commentatrice politique et intervieweuse à la Société Radio-Canada en 1971.

Mme Kishkon fait partie du conseil d'administration de divers organismes de services sociaux et participe activement aux projets communautaires et aux affaires municipales. Ancienne membre du conseil municipal de Windsor, elle a été la première femme maire de cette ville.

Mme Kishkon travaille actuellement comme communicatrice indépendante.

Louis Lenkinski

Membre de l'Union internationale des rembourreurs pendant de nombreuses années, M. Lenkinski en a été le représentant commercial de 1958 à 1969. Depuis, il a assumé les fonctions de directeur des projets et de secrétaire administratif du Labour Council of Metropolitan Toronto. En 1975, il était nommé adjoint de direction de la Fédération du travail de l'Ontario et, en 1984, il devenait membre à temps partiel de la Commission des relations de travail de l'Ontario. M. Lenkinski a été nommé commissaire en juillet 1987 et participe activement au conseil d'administration de nombreux organismes communautaires.

Shirley O'Connor

Mme O'Connor, présidente sortante de la Ontario Native Women's Association, habite à Sioux Lookout. Elle a été directrice du Nishnawbe Gamik Friendship Centre et membre de la chambre de commerce de Sioux Lookout et du comité pour l'expansion économique de cette ville de 1984 à 1986. Mme O'Connor a également fait partie du conseil d'administration de l'hôpital général de Sioux Lookout et de la Ontario Metis and Non-Status Indian Association. Elle est membre de la Commission depuis janvier 1988.

Robert G. Paris

Nommé à la Commission en février 1987, M. Paris était directeur du Centre de traduction et de documentation juridiques de l'Université d'Ottawa et professeur à temps partiel à la faculté de droit de cette même université. Diplômé de l'Université Laval et d'Osgoode Hall, M. Paris avait été admis au Barreau en 1954. M. Paris est décédé à la fin de l'automne 1989.



Elizabeth Kishkon



Louis Lenkinski



Shirley O'Connor

aux États-Unis pour participer, en tant que délégué canadien, à l'Atelier international de l'UNESCO sur le racisme et la discrimination. Il a également été président du B'nai Brith du Canada. En 1979, le Conseil canadien des chrétiens et des juifs, organisme dont il a été co-président national, lui décernait le prix national en droits de la personne. M. Ronson est l'ancien président du comité des relations intercommunautaires du Congrès juif canadien et vient récemment d'étendre son engagement à l'échelle mondiale, d'abord en acceptant la vice-présidence du B'nai Brith International, puis en siégeant au comité consultatif national de la Anti-Defamation League aux États-Unis. Il est fondateur du R. Lou Ronson Research Institute on Anti-Semitism. Vice-président honoraire du Toronto Jewish Community Centre, il siège aussi au conseil d'administration de l'hôpital Mount Sinai. En 1984, l'Université de Haïfa l'a honoré par la création d'une fondation portant son nom qui décerne des bourses aux étudiants étrangers. Au cours des dernières années, il a poursuivi ses activités dans le domaine des affaires en tant que directeur de la banque Hapoalim (Canada).

Dr George Bancroft

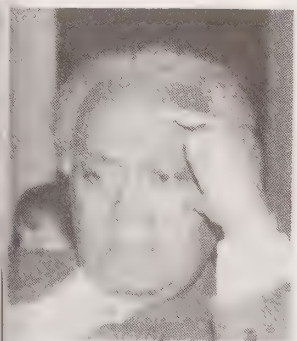
M. Bancroft est professeur émérite du département de politiques et de fondations de la faculté d'éducation à l'Université de Toronto. Il a enseigné en Guyane, au Québec, en Ontario et au New Jersey. Ses nombreux écrits traitent d'éducation et de questions sociales. De 1965 à 1968, M. Bancroft a siégé à une commission provinciale sur les objectifs pédagogiques dans les écoles ontariennes. Il a aussi été directeur général de la Division des relations civiques et multiculturelles de l'ancien ministère des Affaires culturelles et des Loisirs.

John T. Cochrane

M. Cochrane est membre du conseil exécutif de la Section 6500 des Métallurgistes unis d'Amérique. Il est le premier agent d'indemnisation à temps plein du syndicat et s'occupe principalement des cas de maladies industrielles dans le Nord de l'Ontario. Commissaire depuis janvier 1988, M. Cochrane est également un des membres du conseil d'administration de FED-NOR, un programme fédéral visant à stimuler la croissance économique dans le Nord de l'Ontario.

Reva Devins

Nommée à la Commission en mars 1987, Mme Devins vient d'être renommée pour un deuxième mandat. Elle a obtenu un diplôme de premier cycle à l'Université York et est diplômée en droit d'Osgoode Hall et de l'Université Harvard. À la fin de ses études, elle a été choisie pour travailler à titre de clerc pour Monsieur le juge Estey de la Cour suprême du Canada. Membre du Barreau de l'Ontario, Mme Devins a fait des recherches juridiques à la Commission canadienne des droits de la personne et a participé à une importante enquête provinciale, à titre d'adjointe aux avocats-conseils.


Dr. George Bancroft


John T. Cochrane


Reva Devins

La commissaire en chef

Catherine Frazee a été nommée commissaire en chef de la Commission ontarienne des droits de la personne en septembre 1989, poste qu'elle avait d'abord occupé à titre intérimaire durant trois mois. Elle avait également été membre de la Commission durant les quatre années précédentes. Avant sa nomination, elle travaillait comme agent à la coordination à Amnistie Internationale. Ses tâches comprenaient la planification de campagnes de défense des droits de la personne, la consultation sur les stratégies politiques et de communications et la formation des bénévoles oeuvrant à l'échelle mondiale comme défenseurs des droits de la personne.

Mme Frazee a effectué ses études postsecondaires à l'Université Carleton, à Ottawa, se spécialisant en anglais et en linguistique, puis à l'école de droit de l'Université Dalhousie, en Nouvelle-Écosse. Récipiendaire de plusieurs distinctions et bourses d'études, elle est aussi parfaitement bilingue.

Durant de nombreuses années, Mme Frazee a travaillé dans le secteur privé, notamment chez Pétroles Esso Canada, où elle a occupé des postes en planification des ressources humaines, en commercialisation et en contrôle de la qualité. Conférencière chevronnée, elle a publié de nombreux écrits sur les droits de la personne, tant au Canada qu'à l'étranger.

Mme Frazee consacre une partie considérable de son temps au travail communautaire. Elle a siégé aux conseils du Canadian Disability Rights Council et de l'Association canadienne des paraplégiques. Membre active de Persons United for Self Help, elle a également travaillé bénévolement aux Jeux olympiques spéciaux du Canada, à l'Association canadienne pour l'intégration communautaire et à Servas International. Mme Frazee siège aussi au conseil consultatif de la Commission de réforme du droit de l'Ontario.



Catherine Frazee



R. Lou Ronson

Le vice-président : R. Lou Ronson

M. Ronson est l'ancien président-directeur général de la Workwear Corporation of Canada. Très actif dans la collectivité et défenseur des droits de la personne depuis plus de quarante ans, il a été président national de la Ligue des droits de la personne de B'nai Brith Canada. En 1971, il se rend

LES COMMISSAIRES

Les membres de la Commission ontarienne des droits de la personne, qui sont nommés par le lieutenant-gouverneur en conseil, représentent le conseil d'administration de la Commission. Leur responsabilité première est d'administrer **le Code des droits de la personne de l'Ontario.**

Une des principales tâches des commissaires est d'élaborer des politiques et d'étudier les plaintes déposées par le public auprès de la Commission.

Lorsqu'on ne parvient pas à un règlement, les commissaires doivent décider s'il convient de constituer une commission d'enquête, de pousser l'examen du dossier ou de rejeter la plainte.

Mais ce ne sont là que deux facettes du travail accompli par les commissaires. En effet, ceux-ci, de concert avec des membres du personnel, siègent aussi à divers comités dont le mandat est d'accroître le rendement de la Commission en matière de sensibilisation, d'éducation et de gestion des dossiers.

Outre ces initiatives, les commissaires sont appelés à donner des conférences et à se prononcer publiquement sur les dossiers d'actualité en matière de droits de la personne. Ce faisant, ils jouent un rôle primordial dans l'éducation du public en ce qui concerne le Code et les droits de la personne.

Au début de l'exercice financier, la Commission comptait 12 membres jusqu'à la mort du commissaire Robert G. Paris, survenue à la fin de l'automne 1989.



La commissaire en chef a prononcé un discours lors d'une réception donnée en son honneur par l'Urban Alliance on Race Relations.

LE CODE DES DROITS DE LA PERSONNE

C'est en 1962 que l'Ontario adopta le **Code des droits de la personne**, regroupant diverses dispositions touchant la discrimination qui avaient été adoptées dans cette province. Le **Code** fit par la suite l'objet de plusieurs modifications puis, en 1981, un nouveau **Code** fut promulgué. Le **Code des droits de la personne** fut proclamé le 15 juin 1982. En 1986, on modifia de nouveau le **Code** afin qu'il reflète fidèlement l'article sur les droits à l'égalité de la Charte canadienne des droits et libertés.

Le **Code**, qui a priorité sur toute autre loi ontarienne, a pour but de créer au sein de la collectivité un climat de compréhension et de respect mutuel faisant en sorte que la dignité et les droits de toute personne soient respectés et que chacun se sente membre à part entière de la collectivité canadienne et apte à contribuer pleinement à l'épanouissement et au bien-être de la collectivité ontarienne.

Le **Code des droits de la personne (1981)** reconnaît l'égalité des droits...

dans les domaines suivants :

- services, biens et installations
- occupation d'un logement
- contrats
- emploi
- adhésion à un syndicat ou à une association professionnelle

sans discrimination fondée sur les motifs suivants :

- la race
- l'ascendance
- le lieu d'origine
- la couleur
- l'origine ethnique
- la citoyenneté
- la croyance
- le sexe (y compris la grossesse)
- l'orientation sexuelle
- un handicap (physique ou mental)
- l'âge (en matière d'emploi, 18 à 65 ans; en matière de logement, à partir de 16 ans; dans les autres domaines à partir de 18 ans)
- l'état matrimonial (comprend la cohabitation, le divorce, la séparation)
- l'état familial (relation parent-enfant)
- l'état d'assisté social (en matière d'occupation d'un logement seulement)
- l'existence d'un casier judiciaire (en matière d'emploi seulement, pour une infraction provinciale ou une infraction fédérale qui a fait l'objet d'un pardon).

L'Unité de l'observation du Code a traité plus de 60 000 demandes de renseignements l'an dernier — un chiffre impressionnant —, c'est-à-dire presque 250 par jour. Le personnel de cette unité a traité une quarantaine de plaintes officielles en matière de discrimination par semaine. Malgré ces efforts prodigieux, notre lourde charge de travail n'a cessé de croître et le délai entre la réception des dossiers et leur traitement, selon les statistiques pour 1989-1990, est absolument inacceptable. Une telle tendance ne persistera pas toutefois. Car, l'an dernier, nous avons élaboré un grand nombre d'initiatives importantes en matière de stratégies, de restructuration et de fonctionnement qui nous permettront de réduire notre charge de travail et de traiter les plaintes dans de meilleurs délais. Nous procédons actuellement à la mise en oeuvre de ces initiatives. Ainsi, nous pourrons évaluer l'an prochain dans quelle mesure nous avons réussi à gérer efficacement une charge de travail qui s'annonçait catastrophique.

Tout au long de cette intense activité, la Commission est demeurée fidèle à ses valeurs au lieu de se plier aux pressions externes et s'est attachée à atteindre son objectif ultime : être une commission des droits de la personne crédible, ouverte, efficace et progressiste.

Mais notre époque, aussi inouïe soit-elle, est issue de traditions fragiles, qu'il nous faut protéger.

Or, nous avons vécu, au cours des douze derniers mois, l'un des plus douloureux épisodes de notre histoire. Ces incidents ont mis en jeu l'avenir du Canada en tant que nation et ont provoqué douleur et chagrin en mettant à nu des blessures qui semblent encore fraîches. Ces événements ont profondément touché les membres les plus vulnérables de la grande famille qu'est l'humanité, en attaquant leur estime, leur intégrité et leur sécurité. Que peut, dans une telle situation conflictuelle, un petit organisme de défense des droits de la personne comptant 170 fonctionnaires et dix commissaires? Comment peut-il remplir son mandat et promouvoir l'égalité?

Dernièrement, John Kelly, un chef Innu de Sheshashit, au Labrador, écrivait :

«Vous ne partagez peut-être pas mon angoisse spirituelle à voir la terre pillée par des étrangers, mais vous ne pouvez plus échapper à mon destin lorsque le sol devient stérile et que les rivières sont empoisonnées. Bien contre mon gré, et contre le vôtre aussi, sans doute, **le temps et les circonstances nous mettent sur un pied d'égalité.** Ma prière aujourd'hui n'est pas que vous me sauviez de ce monstrueux étranger... Non, je suis venu vous dire que **le danger qui me menace vous menace aussi**, que le génocide de mon peuple sera le génocide de votre peuple ».

Ses mots transcendent le contexte particulier de l'écologie globale. Ils constituent en fait une merveilleuse métaphore pour un environnement socio-culturel qui est menacé par les monstrueux étrangers que sont l'intolérance, la violence, la déchéance et le manque de respect. M. Kelly nous conjure d'agir de façon solidaire et de faire face à notre responsabilité collective.

Il est vrai que le temps et les circonstances nous ont placés dans le même cercle. Or, au centre de ce cercle se trouve un principe fondamental : le respect de la dignité de toute vie humaine. Et ce principe est le fondement du **Code** des droits de la personne en Ontario et l'impératif moral qui doit guider les Ontariennes et les Ontariens.

MESSAGE DE LA COMMISSAIRE

EN CHEF DE LA COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

Nous vivons une époque inouïe où les questions des droits de la personne dominent comme jamais auparavant les débats sur la scène publique.

Que d'événements prodigieux l'humanité entière a-t-elle vécus au cours de l'année qui vient de s'écouler! Des événements qui ont insufflé joie et espoir, qui ont réaffirmé l'irrépressible aspiration de l'être humain à la liberté et à la justice. Qui aurait cru, il y a un an, qu'on lèverait le rideau de fer en Europe de l'Est? Qui aurait eu l'audace de prédire que Nelson Mandela serait libéré de sa longue captivité en Afrique du Sud?

Dans un tel contexte, l'apport et les réalisations d'une commission provinciale des droits de la personne peuvent sembler bien insignifiants. L'an mil neuf cent quatre-vingt-neuf a mis la Commission ontarienne des droits de la personne à dure épreuve : constamment scrutée à la loupe par les médias et le public et aux prises avec des bouleversements internes. Or, l'organisme en est sorti transformé, avec un mandat clair et des objectifs précis. Et son personnel, une équipe de professionnels dévoués et très compétents, déborde d'ardeur et de fougue.

Comme vous le lirez dans les pages qui suivent, la Commission a été fort productive durant l'exercice qui se termine. Ainsi, nous avons montré la voie en matière de politique sociale et de mise en oeuvre d'importantes initiatives d'éducation populaire. Soucieux de notre rôle d'employeur modèle, nous avons réorganisé notre gestion interne, en nous appuyant sur des normes. Nous avons soutenu certaines causes, parfois à l'encontre de l'opinion publique mais souvent à la fine pointe des notions nouvelles en matière d'équité. Enfin, nous avons remis en question le statu quo, souvent avec succès, parfois sans succès, mais toujours conscients du fait que certaines batailles perdues se traduisent par des victoires qui préparent la voie à des transformations.

Nous avons aussi jeté des ponts et raffermi des liens. Attentifs aux répercussions possibles sur la personne, nous avons veillé à ce que chacun de nos gestes et de nos jugements les reflètent fidèlement. Sans compromettre l'impartialité essentielle aux enquêtes et à la prise de décision, nous avons cultivé ce don qu'a si bien décrit Madame la juge Bertha Wilson : « [cette] aptitude spéciale à **écouter avec connivence** avant d'afficher le détachement nécessaire pour prononcer tout jugement ».

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COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

« Auparavant, la notion d'égalité s'associait uniquement à celle d'identité, et mettre tout le monde sur un pied d'égalité voulait dire traiter tout le monde de la même manière. Nous savons maintenant que cette façon de voir va peut-être à l'encontre de la notion d'égalité. [...] L'égalité n'a aucun sens si elle ne signifie pas que nous sommes d'égale valeur malgré des différences de genre, de race, d'ethnie ou un handicap. Le sens qu'on donne à ces différences ne doit pas sanctionner la discrimination.»

Rapport de la Commission sur l'égalité en matière d'emploi
Juge Rosalie Silberman Abella
Octobre 1984

RAPPORT ANNUEL 1989-1990

COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE



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